

COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: AFGHANISTAN

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , since the 2005 Annual Review (AR).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of the Chamber of Commerce of Afghanistan (CCA) (except for the 2006 AR), the Chamber of Commerce of Kabul (CCK), the National Union of Afghanistan Employees (NUAE) and the All Afghanistan Federation of Trade Unions (AAFTU) through consultations or communication of the Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by CCK. 2007 AR: Observations by the CCA.	
	Workers' organizations	2009 AR: Observations by NUAE. Observations by AAFTU. 2008 AR: Observations by the AAFTU. 2007 AR: Observations by the AAFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Afghanistan has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).
		Ratification intention	YES, since 2005, for both C.87 and C.98. 2009 AR: According to the Government: The Council of Ministers has assigned a special committee to review the issue of ratification of C.87 and C.98. This review is being undertaken. The CCK and the NUAE expressed their support to the ratification of C.87 and C.98 by Afghanistan. 2008 AR: The Government indicated that ratification of C.87 and C.98 was currently under evaluation by the Council of Ministers in consultation with employers' and workers' organizations and will be subsequently submitted to Parliament after approval by this Council. 2007 AR: According to the Government: Ratification of C.87 and C.98 will be submitted to the newly established Parliament. The CCA supported ratification of C.87 and C.98 by Afghanistan. The AAFTU supported ratification of C.87 and C.98 by Afghanistan, and hoped that the Government would accelerate this process. 2006 AR: According to the Government: C.87 and C.98 are in the process of ratification. The AWA supported the ratification of C.87 and C.98 by Afghanistan and hoped that this would take place soon.

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	YES According to the Government: The 2004 Constitution guarantees freedom of association to employers’ and workers’ organizations.		
		Policy, legislation and/or regulations	Legislation A special Law on Freedom of Association that was adopted in 2004 relate to the principle and right (PR).		
		Basic legal provisions	(i) Constitution, 2004; (ii) Law on Freedom of Association, 2004.		
		Judicial decisions	NIL		
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2005 AR: Prior government authorization is necessary to operate employers’ organizations. All categories of employers can set up their organizations.	
			For Workers	2005 AR: Prior government authorization is necessary to operate workers’ organizations. Freedom of association can be exercised by all workers in the public service; medical professionals; teachers; agricultural workers; workers in export processing zones (EPZs) or enterprises/ industries with EPZ status, migrant workers, workers of all ages, and all categories of employers. However, workers engaged in domestic work or workers in the informal economy, cannot exercise it as the Labour Code does not cover them. Workers in the informal economy can exercise the right to collective bargaining.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT			Special attention to particular situations	2005 AR: According to the Government: Women.	
			Information/Data collection and dissemination	2005 AR: According to the Government: There is a lack of information and data.	
		At international level	2005 AR: According to the Government: There are no particular restrictions for the international affiliation of employers’ and workers’ organizations.		
	Involvement of the social partners	2007 AR: The CCA stated that it had participated in the May 2008 workshop and in the labour law review process..			
	Promotional activities	2009 AR: According to the Government: A tripartite workshop was organized in collaboration with the ILO in May 2008 on international labour standards (ILS) and the Declaration’s Follow-up. The CCK and the NUAЕ stated that they had participated in the May 2008 National Workshop on ILS and the Declaration’s Follow-up.			
		2008 AR: According to the Government, a tripartite workshop was organized in collaboration with the ILO in May 2007 on ILS and the Declaration’s Follow-up. 2007 AR: According to the Government: a national tripartite Workshop on international labour standards, the Declaration and social dialogue was also organized in 2006 in cooperation with the ILO. The CCA stated that it had participated in this workshop and in the labour law review process. The AAFTU mentioned that it had participated in this workshop, and that it was also working for the improvement of workers’ rights. 2006 AR: According to the Government: a national tripartite seminar on ILS, including ILO fundamental Conventions was organized in Kabul in May 2005 with ILO technical assistance.			

	Special initiatives/Progress	<p>2007 AR: According to the Government: The Ministry of Martyrs, Disabled and Social Affairs drafted a new Labour Law in 2006, in cooperation with the social partners, and the ILO, the comments of which have been integrated in the final text. A new employers' organization have been established in 2005: the Chamber of Commerce of Afghanistan. Several sectorial organizations (teachers, engineers, shop keepers, journalists, writers, doctors, lawyers, etc.) and additional national workers' organizations exist now in the country. The Government organized separate consultations with sectorial organizations that are not federated.</p> <p>The AAFTU mentioned that it was working to improve workers' rights in Afghanistan, and its major objective was the realization of the fundamental principles and rights at work (FPRW) in the country.</p> <p>2006 AR: According to the Government: Following the adoption of the Law on Freedom of Association in 2004, some 170 associations have been registered, including employers' and workers' organizations and cooperatives.</p> <p>2005 AR: According to the Government: In the public sector, workers that have been laid off as a result of structural adjustment have obtained good allowances and/or retirement benefits following a national demonstration that puts pressure on the Government during negotiations.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	2009 AR: The CCK stated that following its request together with the NUA, the Law on Freedom of Association, 2004, was in the process of being amended by Parliament so as to extend the freedom of employers' and workers' organizations to organize and bargain collectively.
		Workers' organizations	<p>2009 AR: The NUA confirmed the information given by the CCK concerning the process of amendment by the Parliament of the Law on Freedom of Association, 2004, so as to extend the freedom of employers' and workers' organizations to organize and bargain collectively.</p> <p>According to the AAFTU: The Government is interfering in trade union elections and the designation of workers' representatives.</p> <p>2008 AR: The AAFTU indicated the following challenges: (i) unemployment; (ii) illiteracy; (iii) a lack of capacity; (iv) lack of professional staff, vocational training and health centres; (v) insecurity; (vi) a lack of rule of law, of compliance with the international conventions, of respect to workers' rights and of the opportunities for the workers' rights defenders; and (vii) poverty and lack of educational centres.</p> <p>2007 AR: According to the AAFTU: (i) AAFTU is the national representative workers' organization of Afghanistan; (ii) AAFTU is not aware of the existence of any organization called "Afghanistan Workers' Association" (AWA); (iii) the Government did not consult with AAFTU in the labour law review process; and (iv) there are practical problems in the registration procedure in Afghanistan, and organizations may not be physically able to do so before the Ministry of Justice - therefore, the Ministry of Social Affairs, and the ILO should help solve this problem.</p>
	According to the Government	<p>2009 AR: In response to the AAFTU's observations, the Government indicated that it did not consider AAFTU as a trade union as it had no legal recognition.</p> <p>2008 AR: The Government had to face multiple unions with very different requests, which make it difficult for social dialogue.</p> <p>2005 AR: Main difficulties encountered in realizing the PR: (i) lack of public awareness or support; (ii) lack of information and data; (iii) social values and cultural tradition; (iv) social and economic circumstances; (v) lack of capacity of responsible government institutions; (vi) lack of capacity of employers' and workers' organizations; (vii) lack of social dialogue on the PR.</p>	

TECHNICAL COOPERATION	Request	<p>2009 AR: The Government reiterated the request made under the 2008 AR to carry out a national case study on freedom of association and the Declaration's Follow-up, along with a workshop on the same subject. The CCK and the NUAE supported the Government's request and further requested the ILO's support for capacity building on FPRW.</p> <p>2008 AR: The Government requested that a national case study on freedom of association and the Declaration's Follow-up be conducted, along with the elaboration of workshops.</p> <p>2007 AR: According to the Government: ILO technical cooperation should be sustained to help Afghanistan better implement the new labour law and realize the FPRW. Labour Inspection and employers' and workers' organizations need ILO support for training and capacity building. A case study on the FPRW is needed in the country.</p> <p>According to the CCA: (i) ILO technical cooperation for training and capacity building of employers' organizations will facilitate the realization of the FPRW in Afghanistan; and (ii) the CCA supports the Government's request for a case study on the FPRW in Afghanistan.</p> <p>According to the AAFTU: (i) The AAFTU strongly needs ILO support for capacity building and training among its affiliates and members; and (ii) it also supports the Government's request for a case study on the FPRW in Afghanistan.</p> <p>2006 AR: The Government wished to organize a special workshop on the Declaration, with ILO technical assistance, so as to facilitate the design of a national Declaration programme that will promote all FPRW and social dialogue, and focus on implementation. It also reiterated its request for technical cooperation projects to facilitate the realization of the PR in Afghanistan in the following areas, in order of priority: (1) promotion of women's right; legal reform, strengthening data collection and analysis, strengthening tripartite social dialogue, strengthening capacity of employers' and workers' organizations; (2) training of other officials; sharing experience across countries; assessment of the difficulties identified and their implications for realizing the PR. The AWA requested ILO technical cooperation to promote the PR among its members and to strengthen its capacity to negotiate collective bargaining agreements.</p> <p>2005 AR: According to the Government: Needs for technical cooperation to facilitate the realization of the PR in Afghanistan exist in the following areas, in order of priority: (1) promotion of Women's right; legal reform; strengthening data collection and analysis; strengthening tripartite social dialogue; strengthening capacity of employers' and workers' organizations; (2) training of other officials; sharing experience across countries; assessment of the difficulties identified and their implication for realizing the PR. The Government would most appreciate the design of a national declaration program that will promote all FPRW and social dialogue.</p>
	Offer	ILO
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) encouraged the Government of Afghanistan (and few other governments) to initiate the necessary labour law reform to remove the obstacles to the ratification of C.87 and C.98. They acknowledged the high number of promotional activities concerning the PR in Afghanistan (and some other countries), and encouraged the Office to maintain its efforts to support these activities. However, the IDEAs noted that restrictions on the rights of certain categories of workers in Afghanistan (and some other countries), such as workers in the informal economy, to organize, were not compatible with the realization of this principle and right (Cf. Paragraphs 32, 35 and 38 of the 2008 AR Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed Afghanistan among the countries that have been indicating their intention to ratify C.87 and C.98 for several years, with no indication that progress has been made (Cf. Paragraph 33 of the 2007 AR Introduction – ILO: GB.298/3).</p> <p>2005 AR: The ILO Declaration Expert-Advisers noted with particular interest the reporting from Afghanistan in spite of the serious difficulties that this country has to face (Cf. Paragraph 8 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: BAHRAIN

FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES. No change reports for the 2004, 2005 and 2009 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	According to the Government: Implication of the Bahrain Chamber of Commerce and Industry (BCCI) and the General Federation of Bahrain Trade Unions (GFBTU) comprises of 65 affiliates.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the BCCI. 2007 AR: Observations by the BCCI.	
	Workers' organizations	2009 AR: Observations by the GFBTU. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the GFBTU Observations by the ITUC. 2007 AR: Observations by the GFBTU. Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the ICFTU. 2005 AR: Observations by the GFBTU and the ICFTU. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Bahrain has ratified neither the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) (C.87) nor the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>YES, since 2002, for both C.87 and C.98.</p> <p>2009 AR: The GFBTU reiterated its support to the ratification of C.87 and C.98 so as to create a synergy in the workplace for all sectors. Moreover, the setting up of a tripartite committee would help in this process.</p> <p>2008 AR: The Government stated that it was planning to establish a tripartite committee that would engage in the ratification of the remaining ILO fundamental Conventions.</p> <p>The BCCI hoped that the tripartite committee would be set up very shortly.</p> <p>The GFBTU supported the ratification of C.87 and C.98 and added that the tripartite committee had not been set up yet.</p> <p>2007 AR: According to the Government, the BCCI and the GFBTU: A tripartite committee should be set up to study and make recommendations on further ratification of ILO Fundamental Conventions, including C.87 and C.98.</p> <p>2006 AR: According to the GFBTU: The Government should ratify both the Conventions Nos. 87 and t98, so that Bahrain can be in line with social globalization.</p> <p>2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001): The Government intends to ratify C.87 and C.98.</p>	
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>YES</p> <p>The 2002 Constitution (Part III) provides for freedom of association and freedom to form trade unions.</p>	
		Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Policy: <p>2002 AR: The Government encouraged the Workers' General Committee to take part in the drafting of policies concerning the PR.</p> <ul style="list-style-type: none"> • Legislation: <p>2005 AR: According to the Government: The amendment of the Labour Law is currently under way in collaboration with the GFBTU. A preliminary draft of the Labour Law in the Private Sector has already been developed. It contains a chapter on collective bargaining.</p> <p>2003 AR: According to the Government: A new Workers' Trade Union Law was enacted in 2002 that introduced the right to join trade unions.</p>	
		Basic legal provisions	(i) The 2002 Constitution (Part III) and (ii) the Workers Trade Union Law (2002); The Labour Law (under revision).	
		Judicial decisions	NIL	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2003 AR: Government authorization/approval is required to establish employers' organizations and to conclude collective bargaining agreements. Employers can exercise freedom of association at the enterprise, sector or industry, national and international levels.
			For Workers	2003 AR: Government authorization/approval is required to establish workers' organizations and to conclude collective bargaining agreements. Freedom of association can be exercised by medical professionals, teachers, agricultural workers, workers in Export Processing Zones (EPZs) or enterprises/industries with EPZ status, migrant workers, workers of all ages, and all categories of employers. Workers can exercise freedom of association at the enterprise, sector or industry, national and international levels. Freedom of association cannot be exercised by workers in the public service, workers engaged in domestic work and workers in the informal economy.

			Special attention to particular situations	NIL
			Information/Data collection and dissemination	2003-2005 ARs: According to the Government: There is a lack of information and data relevant to the PR.
		At international level		According to the Government: The GFBTU is recognized abroad at international, regional and Arab conferences.
	Monitoring, enforcement and sanctions mechanisms	2003-2005 ARs: According to the Government: Specific measures are envisaged to respect and realize this PR: (i) legal reform (labour law and other relevant legislation); (ii) inspection/monitoring mechanisms; (iii) penal sanctions; (iv) civil or administrative sanctions; (v) special institutional machinery; (vi) capacity building of responsible government officials; (vii) training of other government officials.		
	Involvement of the social partners	2000-2002 ARs: According to the Government: The GCBW and the BCCI are involved in tripartite bodies to discuss the PR such as the Higher Council for Vocational Training, tripartite councils and committees in which the Government and employers are represented.		
	Promotional activities	<p>2009 AR: According to the GFBTU: Indeed, The 5th ILO/Gulf Cooperation Council (GCC) Regional Seminar has a positive impact. Moreover, a joint GFBTU–ITUC Conference on C.87 and C.98 was organized to raise awareness on trade union activities and the need for all to support them.</p> <p>2008 AR: The GFBTU participated in the 5th ILO/Gulf Cooperation Council (GCC) Regional Seminar on the ILO Declaration and International Labour Standards in Oman. On this occasion, the right to freedom of association and collective bargaining were discussed. As of June 2007, training on the Declaration Follow-up, namely on the right to collective bargaining will be undergone in cooperation with the ILO.</p> <p>2007 AR: The Government, the BCCI and the GFBTU referred to their participation in the Fourth ILO/Gulf Cooperation Council (GCC) Regional Workshop on the ILO Declaration and International Labour Standards held in Kuwait City in April 2006.</p> <p>2003-2005 ARs: According to the Government: Capacity building for employers' and workers' organizations and awareness raising/advocacy activities have been implemented to promote and realize the PR.</p>		
	Special initiatives/Progress	<p>2008 AR: The GFBTU filed a complaint against the Government of Bahrain regarding the non-observance of the right of Bahraini workers in the public sector to organize.</p> <p>According to the ITUC: Since October 2006, a Decree on employment in the private sector prohibits dismissal for trade union activities. Employers are also obliged to reinstate the sacked employees and to provide compensation if it is proved that workers were discriminated against because of their union activities.</p> <p>2003-2005 ARs: According to the Government: A new law amending the Constitution and allowing the establishment of free trade unions will be adopted shortly.</p>		
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	2007 AR: According to the BCCI: In Bahrain, domestic workers do not enjoy the right to organize and bargain collectively.	

		<p>Workers' organizations</p>	<p>2009 AR: According to the GFBTU: The GFBTU expressed reservations about the genuine intention of Government to ratify C.87 and C.98 given that the power of using strike action as a means for drawing the attention of Government to the plight of workers is not encouraged in the amended labour laws. These laws were revised without consultations with the organized labour unions as concerns the right to strike actions. In addition, the rights of workers in the public sector need to be protected.</p> <p>The ITUC reiterated the observations it made under the previous AR (2008), in particular as regards: (i) restrictions to freedom of association as only one trade union can be formed at each establishment and all trade unions have to belong to the GFBTU; (ii) though in theory they are allowed to join unions, migrant workers that make up roughly 60 per cent of the workforce prefer not to, as they have no protection against dismissal, (iii) a law that was supposed to be adopted in 2007 enshrining the principle of collective bargaining has not yet been adopted; (iv) restrictions exist on the right to strike as on the one hand workers and employers must first seek an amicable settlement of the dispute through conciliation, and, on the other, the Government has considerably lengthened the list of essential services; and (v) employers are becoming impatient with trade union activity.</p> <p>2008 AR: The GFBTU indicated that the Government still does not respect the right to strike and the right to freedom of association. It added that several provisions of the Trade union Law on the right to strike have been amended in July 2006, restricting the right for workers to go on strike. This decision was confirmed by Decree No. 62 of 20th November 2006 in the security, defense, airport, hospital, pharmacy, transportation, communication sectors etc. However, the GFBTU indicated that no consultations with the other social partners were held prior to the amendments, like undertaken in 2002.</p> <p>The GFBTU indicated moreover that a tripartite committee had been set up on labour law review in the private sector. Consultations were also held with social partners in 2006 but the further amendments were not carried out accordingly.</p> <p>It noted that Decree No. 3 of March 2007 provides for disciplinary sanctions when a worker from the public sector is affiliated in a trade union. In this respect, there have been continued negative responses from the Government to the repeated requests concerning the registration of six unions of the public sector - which, according to the GFBTU, contravenes the Bahraini Constitution and National Charter.</p> <p>According to the ITUC: (i) there is a lack of adequate protection for migrant workers. They make up approximately 60 per cent of the workforce. Though in theory they are allowed to join unions and run for union office, they prefer not to as they have no protection against dismissal. Furthermore, the new proposed law does not provide for any labour rights to domestic workers, but contains measures that would protect them against abuse from employers.; (ii) public workers are denied the right to organize; (iii) in November 2006, the government considerably lengthened the list of essential services in which strikes are banned, which already went beyond the ILO definition. Hydrocarbons, health, education, pharmacies and bakers must now be added to the security, civil defence, airport, port and transport sectors.</p> <p>2007 AR: The GFBTU shared the view that domestic workers in Bahrain do not enjoy the right to organize and to collective bargaining. It also mentioned that union leaders were not harassed in Bahrain.</p> <p>According to the ICFTU: there are restrictions on the right to form unions and only one federation can exist in Bahrain.</p>
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		<p>2006 AR: The GFBTU raised the following challenges: (i) the PR is realized only in the private sector; (ii) the Government does not recognize trade unions in the public sector; (iii) the social partners need to be more involved in the reporting process under the Declaration's Annual Review.</p> <p>According to the ICFTU: (i) the law still contains restrictions on the right to strike and on freedom of association and does not specifically provide for collective bargaining.</p> <p>2000-2005 ARs: According to the ICFTU: (i) trade unions are banned in Bahrain (only government-controlled organizations are authorized), (ii) there are restrictions on the right to strike; (iii) labour laws do not apply to domestic servants; (iv) the Joint Consultative Councils (JCC) can only act as advisers and have no real power to negotiate or bargain; (v) the Ministry of Labour must approve the internal rules of the General Committee of Bahraini Workers (GCBW); (vi) political climate makes it difficult to bring grievance to court; (vii) the law does not specifically provide for collective bargaining.</p>
	According to the Government	<p>2007 AR: The Government acknowledged that domestic workers do not enjoy the right to organize and bargain collectively in Bahrain.</p> <p>In response to the ICFTU's observations, the Government made the following comments: (i) several amendments were issued in 2006, namely regarding the recognition of several trade unions at the federal level (Act No. 49/2006), the reinstatement of the dismissed workers for their trade union activities (Act No. 73/2006) and the amendment of the criteria governing the workers' exercise of the right to strike (Act 49/2006), which represent a real qualitative shift in freedom of association in the country; (ii) concerning Section 10 of the Trade Union Act, Bahrain has not ratified Convention No.87 but the provision gives nonetheless the right to join trade unions to workers of the public sector. Moreover, the amendment of Section 10 has been submitted to the Parliament and is expected to be approved during the next session; (iii) regarding restrictions of the right to strike, Section 21 of the Trade Union Act was amended in keeping with international labour standards, allowing strikes when majority to declare a strike is obtained. In addition the definition was provided as regards to "essential enterprises" and identification of these enterprises is made by decision of the Prime Minister (for example, Decision No. 62/2006) who can easily modify it whenever it is necessary; and (iv) concerning collective bargaining, the amendment draft of Decree Law No. 23/1976 including a chapter on collective bargaining was submitted to the Parliament for approval at the next session.</p> <p>2003-2004 ARs: The Government indicated that the main difficulties encountered in Bahrain were the following: (i) lack of information and data; (ii) social and economic circumstances; (iii) legal provisions; and (iv) prevailing employment practices.</p>
	Request	<p>2009 AR: The GFBTU indicated that the ILO's cooperation was needed to support trade unions' actions on cross-cutting issues that relate to creating an adequate environment for all workers.</p> <p>2008 AR: The GFBTU requested ILO technical assistance for a country assessment on freedom of association. It reiterated its request stated in the 2007 AR on training courses for workers' organizations in Bahrain. Tripartite workshops should also be organized in order to improve the conditions of trade union and social dialogue between the social partners.</p> <p>2007 AR: The GFBTU requested ILO technical cooperation to strengthen the capacity of workers' organizations in Bahrain.</p> <p>2006 AR: According to the GFBTU: (i) A national workshop for trade unions on the PR should be organized with ILO technical assistance; (ii) a national tripartite workshop on fundamental Conventions and the Declaration should also be organized so as to identify challenges and solutions and pave the way to ratification.</p> <p>2003-2004 ARs: According to the Government: (i) assessment of the different challenges should be undertaken in collaboration with the ILO as well as their implications for realizing the PR; (ii) strengthening tripartite social dialogue; and (iii) awareness-raising, legal literacy and advocacy.</p>
TECHNICAL COOPERATION	Offer	ILO, GCC

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) observed that the Annual Review had made it possible to highlight and follow up country situations that required greater attention, and that some countries, such as the Gulf States (as well as China and new member States, in particular in the South Pacific), had made important efforts during this process. However, according to them, more needed to be done. The IDEAs welcomed the legal reforms undertaken by certain Gulf countries such as Bahrain, but noted that the workers' right to freedom of association and collective bargaining needed to be respected, especially as regards migrant workers. They drew the attention to the practice in some countries, including Bahrain, where only one official trade union were allowed in practice, and recalled in this regard the following: "the right to official recognition is an essential aspect of the right to organize as it allows employers' and workers' organizations to be in a position to play their roles efficiently. Furthermore, any government intervention in employers' and workers' organizations' internal affairs (right to establish and join organizations of their own choosing, without distinction whatsoever and without previous authorization, right to draw up internal constitutions and rules, right to elect their representatives in full freedom, etc.) constitutes interference in the functioning of these organizations, which is a denial of the principle and right". The IDEAs also acknowledged the high number of promotional activities concerning the PR in the Gulf States (and some other countries), and encouraged the Office to maintain its efforts to support these activities. Finally, the IDEAs noted that restrictions the right to organize of certain categories of workers in Bahrain (and some other countries), such as domestic workers, workers in the public service and workers in the informal economy, were not compatible with the realization of this principle and right" (Cf. Paragraphs 12, 33, 36 and 38 of the 2008 AR Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs noted with interest that some progress had been achieved in the Gulf States regarding the right of workers and employers to organize freely and voluntarily, without being subjected to control by their governments. Furthermore, the IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize for domestic workers. (Cf. Paragraphs 36 and 37 of the 2007 AR Introduction – ILO: GB.298/3).</p> <p>2006 AR: The IDEAs observed that the Government of Bahrain should indicate whether the new Decree relating to trade unions is an implementing Decree relating to existing labour law. They observed the following: "It is important to note that the majority of workers in some Gulf States are migrant workers. Therefore, while we note that certain measures have been reported relating to this principle [...] we stress that the principle should be given full effect as regards all the workers present in these countries, including migrant workers, if these countries are to progress meaningfully in this area". (Cf. Paragraphs 37 and 45 of the 2006 Annual Review Introduction – ILO GB.295/5)</p> <p>2005 AR: The IDEAs listed Bahrain among the countries where progress had been made under the Annual Review in the promotion of freedom of association and the effective recognition of the right to collective bargaining (paragraph 12 of the 2005 Annual Review Introduction). Furthermore, they noted with interest the continuing efforts made by the countries of the Gulf Cooperation Council (Cf. Paragraph 148 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2004 AR: The IDEAs were encouraged by the continuing steps taken by countries of the Gulf Cooperation Council (GCC) in relation to this PR, but noted that there was a long way to go and much to do. They further indicated that the Gulf Cooperation Council States were providing more information on the PR, but not enough on the other three PRs. This would help to illustrate the link between all four PRs. The IDEAs also wished that the positive measures taken by countries in the Gulf Cooperation Council (GCC) be expanded upon (Cf. Paragraphs 29 and 84 of the 2004 Annual Review Introduction – ILO: GB.289/4).</p> <p>2003 AR: The IDEAs commended Bahrain for its continuing dialogue with the Office. They appreciated the adoption of a new legislation relating to freedom of association. They recommended that the Governing Body request that high-level contacts be organized between the Office and two or three countries (including Bahrain) that are not benefiting from ILO technical cooperation on the PR. In light of requests by Bahrain for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, they called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field. (Cf. Paragraphs 4 and 74 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p> <p>2002 AR: The IDEAs recommended that, with a view to a more in depth discussion of certain aspects of the Introduction, the Governing Body request clarifications from Bahrain in relation to the continuation of steps undertaken in the country, in cooperation with the Office, concerning the PR. Furthermore, they acknowledged the high-level dialogue and agreement on a plan of activities between the Office and the Government (Cf. Paragraph 41 (b) of the 2002 Annual Review Introduction – ILO: GB.283/3/1).</p> <p>2001 AR: The IDEAs hoped that the Government of Bahrain would continue a dialogue with the Office regarding the ways in which respect to fundamental principles and rights could be achieved (paragraph 77 of the 2002 Annual Review Introduction). They also recommended to the Governing Body that further information be requested from the Government of Bahrain in relation to efforts made to promote the principle and right (Cf. Paragraph 30 (b) (ii) of the 2001 Annual Review Introduction – ILO GB.280/3/1).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: BRAZIL

FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, since the 2000 Annual Review (AR). No change report for the 2008 AR.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of the employers' organizations (National Confederation of Agriculture (CNA), National Confederation of Trade (CNC), National Confederation of Industry (CNI), National Confederation of Financial Institutions (CNF), and National Transport Confederation (CNT) and workers' organizations (Single Central Organization of Workers (CUT), General Confederation of Workers (CGT), Força Sindical (FS), and Social Democratic Union (SDS), Independent Workers Confederation (CAT), and General Confederation of Workers of Brazil (CGTB)) by means of consultations and communications of the Government's reports	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the CNC. 2001 AR: Observations by the CNC. 2001 AR: Observations by the CNT.	
	Workers' organizations	2009 AR: Observations by the CUT. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the CUT. Observations by the ITUC. 2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU). 2005 AR: Observations by the ICFTU. 2004 AR: Observations by the CUT. 2003 AR: Observations by the CUT. 2002 AR: Observations by the CUT. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the SDS.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Brazil ratified in 1952 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>YES, according to the Government: Ratification of C.87 depends on: (i) the outcome of consultations within the tripartite National Congress's approval of Constitutional amendments; and (ii) National Labour Forum; and (iii) the labour law reform to comply with the provisions of C.87. Such amendments would render the Constitution compatible with the Convention, thus allowing for its ratification.</p> <p>2009 AR: The CUT expressed concern regarding the inaccuracy of the Expert-Advisers' position concerning the fact that the CUT did not favour ratification of C.87. This misinformation was harmful to the CUT as it implied a transgression of the CUT's own obligations and mandate vis-à-vis its Constitution that prescribed the struggle to promote freedom of association, especially through the ratification of C.87. In addition, whenever tackling labour reform, the CUT supported the end of the single trade union system.</p> <p>2008 AR: The Government reiterated its observation made in the 2007 AR. The CNC expressed its support to the ratification of C.87 and stated that the Government should address the issue.</p> <p>2007 AR: According to the Government: It is currently still not possible to ratify C.87, since the Constitution (article 8 of the Constitution) runs contrary to the text of this Convention. However, the proposed Constitutional Amendment No. 369/05 is currently being examined by the National Congress, at the request of the Executive, with the aim of ensuring freedom of association. This amendment would render the Constitution compatible with the Convention, thus allowing for its ratification.</p> <p>2003-2005 ARs: According to the Government: A new 60-member tripartite "National Labour Forum" has submitted to the National Congress a proposal to amend the national legislation on industrial relations in order to ratify C.87. It is expected that Congress will soon review this proposal.</p> <p>2000-2003 ARs: According to the Government: The Executive submitted to the National Congress a "Proposed Constitutional Amendment" (PEC) No. 623/98 in November 1998 to suppress the single trade union requirement and the compulsory tax to ensure freedom of association as provided for in C. 87. Unfortunately, the PEC was shelved on a rule of procedure without being debated at the end of 2000.</p>
	Recognition of the principle and right (prospect(s), means of action, main legal provisions)	Constitution	The 1988 Constitution guarantees freedom of association and collective bargaining (with the exception of the armed forces), but imposes the single trade union requirement according to which there can be only one trade union organization to represent an occupational or economic category in a given territorial area (art. 8, paragraph II). This requirement (known as "unicidade") prohibits the establishment of enterprise unions. Also enshrined in the Constitution is a compulsory trade union tax, which is levied on each worker by the Ministry of Labour and distributed to the national trade union federations according to the number of members.
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Policy/ Legislation and/or Regulations	<ul style="list-style-type: none"> • Legislation: <p>2001 AR: The consolidated labour laws (CLT) and the labour protection laws (LPL) relate to the principle and right (PR).</p>
		Basic legal provisions	(i) The 1988 Constitution (article 8, paragraph II); (ii) Consolidation of Labour Laws (CLT); and (iii) Labour protection laws.
		Judicial decisions	2002 AR: In 2001, the Upper Labour Court decided that the Labour Justice System is competent to declare a strike legal or illegal: "A strike is illegal when carried out in sectors that the law defines as essential to the community, if provision has not been made (...) to meet the basic, essential needs of the users of the service".

	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2000-2005 ARs: According to the Government: No authorization is required to establish employers' organizations, with the exception of registration with the Ministry of Labour and Employment, and with the provision that only one trade union organization can represent an occupational or economic category in a given territorial area.
			For Workers	2000-2005 ARs: According to the Government: No authorization is required to establish workers' organizations, with exception of registration with the Ministry of Labour and Employment, and with the provision that only one trade union organization can represent an occupational or economic category in a given territorial area.
			Special attention to particular situations	2004-2005 ARs: According to the Government: The situation of specific categories of persons or industries/sectors, such as public servants, dockworkers, rural workers, the waterways, maritime and port sectors, liberal professions, transport and pensioner, and micro and small enterprises.
			Information/ Data collection and dissemination	2003 AR: According to the Government: The Brazilian Institute of Geography and Statistics (IBGE) estimates the number of trade unions in Brazil at 20,000; a number close to that recorded in the administrative records of the Ministry of Labour and Employment. 2000 AR: According to the Government: With regard to freedom of association and the right to organize, data from the Ministry of Labour and Employment show that there were about 10,600 legally recognized unions from 1931 to October 1988 during which, the State exercised control over the establishment and running of trade unions in Brazil. In the post-constitutional period (1988-2000) almost 6,600 unions have been formed. In total, there are 17,200 union organizations representing occupational and economic categories.
			At international level	Unions are free to affiliate to similar international organizations.
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Monitoring, enforcement and sanctions mechanisms	2005 AR: According to the Government: In instances where the Government finds that this PR has not been respected, sanctions are provided for under national laws. A draft law on the prevention of anti-union practices has been debated in the National Labour Forum. 2004 AR: According to the Government: In instances where the Government finds that this PR has not been respected, it reports the matter to the Labour Prosecutor, who initiates the appropriate legal or administrative proceedings. 2003 AR: According to the Government: If workers feel their rights have been infringed, they can resort to the Labour Justice System, which is comprised of the Upper Labour Court, regional labour courts and labour magistrates. The Department of Labour Prosecutor is another body responsible for protecting collective and professional interests.		
	Involvement of the social partners	2004 AR: According to the Government: Social partners have been involved in the National Labour Forum proposed by the present Government to reform industrial and trade union relations and to various tripartite consultations relating to labour relations issues.		
	Promotional activities	2009 AR: According to the Government: A senior official of the Ministry of Labour participated in the ILO/TURIN course on international labour standards that included topics such as the 1998 ILO Declaration and issues pertaining to the PR. 2003 AR: The Government referred to the participation of the most representative employers' and workers' organizations in the Southern Common Market (MERCOSUR) social and labour forums at regional level. 2000 AR: According to the Government: The Ministry of Labour and Employment including labour court judges and the civilian society have developed a broad programme of seminars, courses, training modules and similar activities on labour relations issues, in cooperation with the ILO. Several handbooks were also published on various topics including unionization.		
	Special initiatives/ Progress	2005 AR: According to the Government: The adoption of the final report on the Trade Union Reform. 2004-2005 ARs: According to the Government: The creation of the National Labour Forum (FNT), a tripartite body, which focuses on elaborating proposals for trade union and labour reform.		

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	NIL
		Workers' organizations	<p>2009 AR: According to the CUT: Whenever tackling labour reform, the CUT supports the end of the single trade union system.</p> <p>The ITUC reiterated the observations it made under the previous ARs, in particular as regards: (i) the link between the “Unicidade” System and the compulsory trade union tax; and (ii) the practical impossibility to exercise the right to strike in the public service and in the private sectors. It also mentioned the new Law 1990/07 of the Executive Power that recognizes trade union confederations as entity to represent workers generally and legally, as well as the need for the Government to put into practice its intention expressed by President Lula da Silva to revise Brazil Labour Code in compliance with international labour standards, especially C.87.</p> <p>2008 AR: The ITUC indicated the following challenges: by law, each worker must pay a compulsory trade union tax, equivalent to one day's pay. It is deducted from their pay in March and then distributed to the unions, federations and confederations. A portion also goes to an employment and wage fund at the Ministry of Labour. The funds are distributed in proportion to the number of workers legally represented (based on the obligatory single union system, not on the number of workers actually affiliated).</p> <p>2007 AR: According to the ICFTU: (i) the "unicidade" system provides that there can only be one trade union per economic or occupational category in each territorial area. This geographically based single union system means that some sectorial federations and national trade union centres are not legal; (ii) restrictions on the right to strike in the public services; (iii) establishment by companies of a blacklist system that targets workers who filed complaints against their employer; (iv) the anti-discrimination legislation is not enforced in case of violations and (v) weak enforcement of labour laws in the Export Processing Zones (EPZs).</p> <p>2005 AR: The ICFTU made observations on the following issues: (i) violation of union rights by employers; (ii) establishment by companies of a blacklist system that targets workers who filed complaints against their employer; (iii) rural workers' unions are confronted by hostile employers; (iv) incapacity of national authorities to apply anti-union discrimination and (v) weak enforcement of labour laws in the Export Processing Zones (EPZs).</p> <p>2002-2004 ARs: The CUT made the following observations: (i) there are constitutional, legislative, and administrative barriers to freedom of association; (ii) labour courts may order the stoppage of a strike and impose fines on striking unions; (iv) the Government's control over trade union registration; (v) violation of trade union rights in Brazil because of employers and police's obstruction of the work of trade unions and (vi) incapacity of the national authorities to protect workers' rights.</p>

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the Government	<p>2007 AR: According to the Government: The proposal for trade union organization agreed upon during the National Labour Forum to be submitted to the National Congress in 2006 will still not allow ratification of C.87, because the proposed model is neither for trade union nor for plurality, but is based on the real or <i>de facto</i> representativity of trade union bodies, unlike the present model where representativity is merely legal, with representation and unity based primarily on the seniority of trade union bodies.</p> <p>In response to the ICFTU's observations, the Government made the following comments: (i) a new legislation proposed within the National Labour Forum (FNT), in July 2003, which is pending the end of the examination of the Proposed Constitutional Amendment (PEC) 369/05, provides for a series of situations involving anti-union conduct. Any act, the purpose of which is to undermine or damage trade union activity on the part of the employers or the workers, shall be held to be anti-union conduct and the perpetrator shall be subject to penalties; (ii) article 37, VII, of the Federal Constitution guarantees the right to strike of civil servants, stipulating that this right shall be exercised under the terms and within the limits defined under the relevant law. However, no law has been passed regulating the exercising of the right to strike of civil servants. Therefore, the Constitutional Court of Brazil, issued a ruling in which it stated the following: "(...) the constitutional precept that recognized the right to strike of public civil servants constitutes a standard of purely limited effectiveness and is consequently not self-executing, for which reason, in order to act fully, it requires the passage of the supplementary law called for in the text of the Constitution itself (...)" Aware of the need for regulations governing the right to strike of public civil servants, the Government, within the framework of the Sectorial Chamber of the Public Service of the National Labour Forum (FNT), guided the discussions with the social partners directly concerned by this issue, with the aim of formulating a draft law regulating the right to strike of civil servants. The draft law is in the final stage of preparation. Moreover, as was previously pointed out, the Government also strengthens its commitment to an urgent project directed at Brazilian workers. The aim of the project is to regulate the right to strike in the public service, this constitutional precept never having previously been regulated. The issue was widely debated within the Sectorial Chamber of the Public Service of the FNT.</p> <p>2005 AR: The main difficulties encountered in realizing the PR in Brazil are as follows: (i) lack of public awareness and/or support; (ii) social values, cultural traditions; (iii) social and economic circumstances; (iv) political situation; (v) legal provisions; (vi) lack of capacity of employers' organizations (vii) lack of capacity of workers' organizations.</p> <p>2002-2003 AR: Much progress has been made as far as the PR is concerned and it believes that technical cooperation offered by the ILO has helped greatly in developing a new model of labour relations in Brazil. However, despite the wide-ranging constitutional and legal guarantees, the Government also acknowledges that there are barriers in realizing the PR. These include: the rule whereby there may be only one union for each occupational or economic category, and the rule whereby everyone must pay compulsory union/confederation contribution.</p>
TECHNICAL COOPERATION	Request	<p>2005 AR: The Government identified needs for technical cooperation in the following areas: (1) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR, awareness raising, legal literacy and advocacy, strengthening data collection and capacity for statistical analysis, legal reform (labour law and other relevant legislation), (iv) capacity building of responsible government institutions, training of other officials (police, judiciary, social workers, teachers), strengthening capacity of employers' organizations, strengthening capacity of workers' organizations, strengthening tripartite social dialogue; (2) Sharing of experiences across countries/regions.</p> <p>2002 AR: The Government in response to the ICFTU comments made the following observations: (i) although progress has been made, there are still major obstacles in realizing the PR; (ii) violence against rural workers relates to a high concentration of land ownership, disputes about access to land and demands for agrarian reform rather than to union issues; (ii) there is a broad constitutional guarantee of freedom of association for civil rights, however they do not have the right to engage in collective bargaining; (iii) union leaders from the time their candidatures have been registered must be kept in employment for up to one year after the end of their term of office (article 8, (VIII)); (iv) in case of improper dismissal of union members in the public sector, those affected have the right to return to their occupation by order of the competent authority of the system of justice; (v) the strike is not authorized for category of workers of essential services.</p> <p>2001 AR: The Government in response to the CNC made the following comments: (i) the observations of the CNC were not reflected in the Government final report because they were sent later; (ii) the Government supports the view of CNC concerning the scope of Act. No. 9. 958 of the 12 January 2000, amending the Consolidation of Labour Laws.</p>

	Offer	ILO, MERCOSUR, the Organization of American States (OAS).
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of Brazil (and another country) reported that it did not intend to ratify C. 87. They noted that, after an initial stage where the Government had been seeking to amend its Constitution with a view to allowing greater freedom of association, since 2006, the Government indicated that it was not possible to ratify this Convention as it run contrary to the provisions of the Constitution. The IDEAs also noted that the Single Central Organization of Workers (CUT) supported maintaining the single trade union system and therefore did not favour ratification of Convention No. 87. In this regard, the IDEAs expressed concern that insufficient governmental efforts had been made in order to meet the commitment of removing legal obstacles, and urged the Government to proceed in this matter and work jointly with the Office in giving effect to this PR. Finally, the IDEAs noted that restrictions, in Brazil (and other countries), on the rights of certain categories of workers in Brazil (and some other countries), such as workers in the export processing zones, and workers in the public service, were not compatible with the realization of this principle and right (Cf. Paragraphs 27, 28 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed Brazil among the four countries in which 52 per cent of the total labour force of ILO member States live and which have not yet ratified C.87 and C.98. This leaves many millions of workers and employers without the protection offered by these instruments in international law, even if the governments concerned may consider that their law and practice are sufficient. Furthermore, the IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize of workers in the export processing zones and workers in the public service. (Cf. Paragraphs 32 and 37 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The IDEAs listed Brazil among the countries where some efforts are being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (Cf. Paragraph 13 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2004 AR: The IDEAs noted that Brazil was still seeking to amend its Constitution to allow greater freedom of association, and urged the Government to proceed in this matter (Cf. Paragraph 80 of the 2004 Annual Review Introduction– ILO: GB.289/4).</p> <p>2003 AR: The IDEAs noted that there were also indications of legislative developments toward realizing the PR in Brazil (Cf. Paragraph 39 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p> <p>2001 AR: The IDEAs noted that relatively few national employers' organizations submitted separate observations, but where they did, they offered useful insights into their experiences and the implications of recent legislative and institutional developments, as in the case of Brazil. (Cf. Paragraph 76 of the 2001 Annual Review Introduction – ILO: GB.280/3/1).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2009)¹: BRUNEI DARUSSALAM

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, under the 2008 Annual Review (AR).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the employers' organizations (the National Chamber of Commerce and Industry, NCCI) and workers' organizations (the Brunei Oilfield Workers Union, BOWU) by means of consultation and communication of a copy of the Government's report and country baseline.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the NCCI and its three affiliates	
	Workers' organizations	2009 AR: Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the BOWU Observations by ITUC.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Brunei Darussalam has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).
		Ratification intention	Under consideration, in consultation with the employers' and workers' organizations. 2009 AR: The Government reiterated that it was still reviewing the possibility to ratify C.87 and C.98 in consultation with the employers' and workers' organizations. 2008 AR: The Government stated that it is considering the possibility to ratify C.87 and C.98, in consultation with the employers' and workers' organizations. The NCCI supported the ratification of all the ILO fundamental Conventions by Brunei Darussalam, including C.87 and C.98. The BOWU wished to explore the possibility of ratifying C.87 and C.98 with the Government and the employers' organizations.
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	NO
		Policy, legislation and/or regulations	<ul style="list-style-type: none"> Legislation The Trade Union Act CAP 128; and The Trade Disputes Act CAP 129 2008 AR: There is no provision in the laws that underpins the right to collective bargaining. An individual contract is required between an employer and a worker, and trade union activities are not allowed to violate these individual labour contracts.

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Basic legal provisions	(i) The Trade Union Act CAP 128 (sections 3, 8, 13 and 15-21); and (ii) the Trade Disputes Act CAP 129 (sections 3, 7-30).	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2008 AR: Government authorization or approval is required to establish an employers' organization. Employers' organizations are established under the applicable law regulations The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry and national levels for all categories of employers.
			For Workers	2008 AR: Government authorization or approval is required to establish a workers' organization, but not to conclude collective agreements. The conditions for establishing workers' organizations are provided for under the Trade Union Act CAP 128. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry and national levels for the following categories of workers: (i) all workers in the public service, except in the army, police and prison services under the Trade Union Act CAP 128. However, a social and welfare association has been formed by prison staff under the Societies Order, 2005, and this association can defend the professional interests of this category of workers; (ii) medical professionals; (iii) teachers; (iv) agricultural workers; (v) workers engaged in domestic work; (vi) workers in export processing zones (EPZs) or enterprises/industries with EPZs status; (vii) migrant workers; (viii) workers above the age 18 years or between 16 and 18 with parental consent; and (ix) workers in the informal economy. According to the BOWU, the right to collective bargaining is exercised through the free negotiation of collective agreements between the BOWU and Brunei Shell Petroleum. In this respect, a collective agreement is concluded every three years (with possibility of extension) and registered as such in the Labour Department.
			Special attention to particular situations	NO
			Information/ Data collection and dissemination	According to the BOWU: 232 out 831 workers among the technical assistant supervisors of Brunei Shell Petroleum are unionised with the BOWU. According to the NCCI: the NCCI gathers about 1,500 employers and is composed by three major affiliates: the Malay Chamber of Commerce and Industry (MCCI), the Chinese Chamber of Commerce (CCC) and the International Chamber of Commerce (ICC).
		At international level	According to the Government: The principle and right (PR) is recognized at international level for employers' and workers' organizations, subject to the provisions of section 17 of the Trade Union Act CAP 128.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Monitoring, enforcement and sanctions mechanisms	2008 AR: According to the Government: Specific governmental measures have been implemented (legal reform, inspection and monitoring mechanisms by the Labour Department Inspectorate, penal sanctions, capacity building of responsible government officials, tripartite discussion of issue and awareness raising/advocacy) to respect, promote and realize freedom of association in the country. In this regard, the Trade Union Act CAP 128, section 19, provides for penal sanctions (fines of B\$ 6,000 (about US\$ 4, 445 as of November 2007) and 6 months imprisonment) when an employer contravenes the Trade Union Act provisions by discriminating a worker on the basis of his being or not being a member of a trade union.		

	Involvement of the social partners	<p>2009 AR: According to the Government, the employers' and workers' organizations are being involved in the ratification process of the ILO fundamental Conventions.</p> <p>2008 AR: According to the Government: the MCC and the BOWU are involved tripartite consultations.</p>	
	Promotional activities	<p>2009 AR: The Government indicated that one of its senior officers participated in the May 2008 Turin Course on international labour standards and the 1998 ILO Declaration.</p> <p>2008 AR: According to the Government: In November 2007, officials of the Labour Department of the Ministry of Home Affairs and of the Attorney General's Office were sensitized on the fundamental principles and rights at work, ILO fundamental Conventions and reporting issues during ILO's assistance in reporting issues carried out in November 2007.</p> <p>The NCCI stated that it promotes the relationship between these principles and rights, decent work and sustainable enterprises through discussions among its members and with the Government.</p> <p>The BOWU stated that it organizes monthly meetings to increase knowledge on ILO and fundamental principles and rights at work among its members.</p>	
	Special initiatives/Progress	<p>2009 AR: The Government stated that it had celebrated the Labour Day on 3 May 2008, including ILO's participation on Decent Work issues, and a walkathon.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2008 AR: According to the NCCI: No problems are being encountered to exercise the PR in the country. However, employers lack capacity building on the PR.</p>
		Workers' organizations	<p>2009 AR: The ITUC reiterated the observations it made under the 2008 AR, in particular with respect to: (i) legal restrictions concerning trade union rights (creation and international affiliation); (ii) the non-explicit recognition of the right to strike; (iii) the absence of legal provisions governing collective bargaining; and (iv) the exclusion of skilled and unskilled migrant workers from the scope of the majority of labour laws.</p> <p>2008 AR: According to the BOWU: There are no major problems to exercise the PR in the country, and bipartite negotiations with Brunei Shell Petroleum have been fruitful so far for workers, without any government interference. However, the issue of freedom of association and the right to collective bargaining needs to be further discussed with the Labour Department so as to strengthen the capacity of workers' organizations and the Labour Department officials.</p> <p>According to the ITUC: In Brunei Darussalam, the suspension of democratic rights, dating from 1962 and renewed by the government every two years, prevents trade union activity. The law prohibits unions and federations from affiliating with international union bodies unless they receive prior written consent from both the Minister of Home Affairs and the Labour Department. Also, it does not explicitly recognize the right to strike. Except for those in the army, police and prisons, civil servants are permitted to form and join unions, but none have done so. Moreover, their associational rights as well as those of the members of the security forces are significantly limited by a strict prohibition against them to join political parties of any kind. In practice, there are only three trade unions registered in the country, all in the oil sector, representing a total of approximately 1,500 workers. Two of the unions representing office workers are allegedly inactive, while the remaining union, comprised of manual oil field workers, has limited activities. These unions exercise little independence from government authority. There was virtually no discernible trade union activity in 2006. As regards migrant workers, the majority of national laws apply only to nationals, thereby failing to cover skilled and unskilled migrant workers, who make up from 30 to 40 per cent of the total workforce. Migrant workers are over 100,000 in the country, including over 10, 000 garment workers, none of whom are members of a trade union. Some migrant workers have reportedly carried out work stoppages in protest, which are illegal under the labour law barring strikes. In September 2005, three hundred migrant workers employed by a garment factory held a public protest complaining that they have not been paid for six months. As the protest was not permitted to continue, government officials reportedly worked with foreign Embassy staff to find alternative employment for the workers while prosecuting the company's representatives.</p>

	According to the Government	<p>2009 AR: The Government reiterated the challenges indicated in the 2008 AR.</p> <p>2008 AR: According to the Government: (i) Lack of public awareness and/or support; (ii) Lack of information and data; (iii) legal provisions; (iv) lack of capacity of responsible government institutions; (v) lack of capacity of employers' and workers' organizations; and (vi) lack of social dialogue on the principle and right (PR).</p> <p>In response to the ITUC's observations, the Government stated as follows: (i) the Trade Unions Act (CAP 128) and the Trade Disputes Act (CAP 129) regulate trade unions and trade disputes respectively, and both legislations are still in force -- Moreover, as of 2004, the Legislative Council was re-established and comprises 45 persons including representatives from the four districts; (ii) the current unions registered under the Trade Unions Act are the following: (a) The Brunei Government Subordinates Officers' Union; (b) the Royal Brunei Customs Workers' Union; and (c) the Brunei Oilfield Workers' Union (BOWU); (iii) as regards the members of Royal Brunei Police Force, the Royal Brunei Armed Forces and the members of the Prison Services, they are not allowed to join any trade union. However, they are protected under specific laws, namely the Royal Brunei Police Act, (CAP 50), the Royal Brunei Armed Forces Act (CAP 149), and the Prisons Act (CAP 51); (iv) civil servants are not prohibited from joining trade unions; (v) concerning migrant workers, although this category of workers are not prohibited from joining trade unions and are protected under national labour laws, they are not members of any trade unions. Moreover, national laws do not differentiate between citizen and non-citizen workers; and (vi) as regards the garment industry, there were about 6,250 garment workers in 2006. The Government has taken legal action against a garment factory for failing to pay wages to citizens and non-citizens. The company faces 200 criminal charges concerning non-payment of wages under Section 108 of the Labour Act (CAP 93), and if found guilty, it could be fined up to B\$300,000 (about US\$ 222, 000 as of November 2007). Winding up proceedings have also been taken against the company whereby a liquidator has been appointed.</p>
TECHNICAL COOPERATION	Request	<p>2008-2009 ARs: According to the Government: There is a need for ILO technical cooperation to facilitate the realization of the PR in Brunei Darussalam, in particular in the following areas, by order of priority: (1) strengthening data collection and capacity for statistical collection and analysis; sharing of experiences across countries/regions; (2) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR; legal reform (labour law and other relevant legislation); capacity building of responsible government institutions; strengthening tripartite social dialogue; training of other officials (e.g. police, judiciary, social workers, teachers); and (3) awareness-raising, legal literacy and advocacy; strengthening capacity of employers' and workers' organizations. These priorities may be satisfied through the preparation (survey and validation seminar) and the possible launch of a national programme to promote and realize the fundamental principles and rights at work in Brunei Darussalam, in consultation with the employers' and workers' organizations and the ILO.</p> <p>The NCCI and the BOWU supported the Government's requests, including the capacity building of the employers' and workers' organizations and the preparation of a national survey followed by a tripartite workshop on the Declaration's follow-up in Brunei Darussalam.</p>
	Offer	ILO (consultations on Decent Work Country Programme and assistance in reporting under the AR).
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS		2008 AR: The ILO Declaration Expert-Advisers noted with particular interest that Brunei Darussalam, a new ILO member State, has provided a report (Cf. Paragraph 25 of the 2008 AR Introduction – ILO: GB.301/3).
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS		NIL



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: CANADA

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, since the start of the Annual Review (AR) in 2000.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Federal Government: Involvement of the Canadian Employers' Council, the Canadian Labour Congress and the Confédération des Syndicats Nationaux through communication of government reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	NIL	
	Workers' organizations	2008 AR: Observations by the International Trade Union Confederation (ITUC). 2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU). 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Canada ratified in 1972 the Freedom of Association and the Right to Collective Bargaining Convention, 1948 (No. 87) (C.87). However, it has not yet ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98).
		Ratification intention	Unable to ratify at this time C.98. 2009 AR: The Government indicated that it was pursuing discussions with provincial and territorial governments concerning ratification of C.98. Moreover, it was also monitoring developments with respect to the June 2007 decision of the Supreme Court of Canada that found that freedom of association under section 2(d) of the Canadian Charter of Rights and Freedoms protects the right of employees to associate in order to achieve workplace goals through a process of collective bargaining. 2008 AR: The Government indicated that Canada is pursuing discussions with provincial and territorial governments concerning ratification of C.98. 2006 AR: According to the Government: While there is a high degree of conformity with the principle of collective bargaining in Canada, there are some differences between national legislation and specific provisions of C.98 as interpreted by the ILO Committee of Experts. 2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (2002): The Government would continue to examine the Convention in consultation with the provinces and territories.

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

	Recognition of the principle and right (prospect(s), means of action, main legal provisions)	Constitution	<p>YES</p> <p>According to the Government: In the Constitution, the Canadian Charter of Rights and Freedoms provides for freedom of assembly and association. The Charter applies to Parliament, the provincial/territorial legislatures and the federal provincial and territorial governments. Freedom of association is also enshrined in Quebec's <i>Charte des droits et libertés de la personne</i> that applies to the government of Quebec and to the private sector in that province.</p>
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Policy, legislation and/or regulations	<ul style="list-style-type: none"> Policy Government's prospects: Continuing promotion of the principle and rights of the Declaration. 2005 AR: The Federal Government stated that ILO technical advisory assistance was valuable during a workshop for federal, provincial and territorial government representatives on issues pertaining to Canada's international labour obligations and the ILO's supervisory mechanisms and the Declaration of Fundamental Principles and Rights at Work held in February 2003. 2003 AR: The Government expressed interest in exploring the use of ILO communication products for the promotion of the 1998 <i>ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up</i>. Legislation The Canadian Charter of Rights and Freedoms as well as federal, provincial and territorial labour relations legislation to the principle and right (PR): <ul style="list-style-type: none"> 2000-2005 ARs: According to the Government: All Canadian governments have adopted labour legislation, which recognizes and provides a framework for collective bargaining for employees and employers within their respective jurisdictions.

		Basic legal provisions	<ul style="list-style-type: none"> – Canadian Charter of Rights and Freedoms – Federal legislation: (i) Canada Labour Code (Part I); (ii) Public Service Staff Relations Act; (iii) Status of the Artist Act. – Provincial and territorial legislation: <i>Alberta</i> : Labour Relations Code (LRC) ; Public Service Employee Relations Act (PSERA); Police Officers Collective Bargaining Act (POCBA). <i>British Columbia</i>: Labour Relations Code; Public Service Labour Relations Act. <i>Manitoba</i>: Labour Relations Act; Civil Service Act (certain sections); Public Schools Act; Fire Departments Arbitration Act. <i>New Brunswick</i>: Industrial Relations Act; Public Service Labour Relations Act; <i>Newfoundland</i>: Labour Relations Act; Public Service Collective Bargaining Act; Interns and Residences Act; Newfoundland Teachers Collective Bargaining Act; Fishing Industry Collective Bargaining Act; Royal Newfoundland Constabulary Act; St. John's Firefighters Act. <i>Nova Scotia</i>: Trade Union Act; Teachers' Collective Bargaining Act; Corrections Act; Civil Service Collective Bargaining Act; Highway Workers' Collective Bargaining Act. <i>Ontario</i>: Labour Relations Act, 1995 (LRA); School Boards and Teachers Collective Negotiations Act, 1993; Crown Employees Collective Bargaining Act; Public Service Act; Colleges Collective Bargaining Act; Hospital Labour Disputes Arbitration Act; Police Services Act; Fire Protection and Prevention Act, 1997; Public Sector Transition Stability Act, 1997. <i>Prince Edward Island</i>: Labour Act; Civil Service Act and Regulations; School Act. <i>Quebec</i> : Code du travail (LRQ, c. C-27) (Labour Code) ; Loi sur le régime de négociations des conventions collectives dans les secteurs public et parapublic (Act in respect of the process for negotiating collective agreements in the public and parastatal sectors) ; Loi sur les relations de travail, la formation professionnelle et la gestion de la main-d'œuvre dans l'industrie de la construction (LRQ, c. R-20) (Act in respect of labour relations, vocational training and manpower management in the construction industry) ; Loi assurant le maintien des services essentiels dans le secteur de la santé et des services sociaux (Act to ensure that essential services are maintained in the health and social services sector) ; Loi sur le statut professionnel et les conditions d'engagement des artistes de la scène, du disque et du cinéma (LRQ, c. S-32.1) (Act concerning the professional status and conditions of engagement for performing artists, recording and film artists) ; Loi sur le statut professionnel des artistes des arts visuels, des médias d'art et de la littérature et sur leurs contrats avec les diffuseurs (LRQ, c. S-32.01) (Act in respect of the professional status of artists in the visual arts and crafts and literature and their contracts with promoters). <i>Saskatchewan</i>: Trade Union Act; Police Act; Fire Departments Platoon Act; Construction Industry Labour Relations Act. <i>Northwest Territories and Nunavut</i>: Public Service Act. <i>Yukon</i>: Education Act; Public Service Staff Relations Act. 	
		Judicial decisions	<p>2008 AR: a decision of June 2007 by the Supreme Court has considered that the workers' right to associate in order to achieve workplace goals through a process of collective bargaining is protected under Article 2(d) of the Canadian Charter of Rights and Freedoms. The Government reported that since this overturns the Court's prior jurisprudence, this decision could have significant implication for industrial relations in the country.</p>	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2000-2003 ARs: All categories of employers may engage in collective bargaining either under legislation or on a voluntary basis.

			For Workers	2003 AR: The right to collective bargaining, with a few exceptions, applies to “employees”, defined as workers who have an employment relationship and who are not employed in a confidential capacity with respect to labour relations or do not exercise management functions. In some jurisdictions, some or all of the following categories of workers may be excluded from collective bargaining legislation, but are nevertheless entitled to negotiate with their employers on a voluntary basis: agricultural workers, domestic workers, and members of the medical, dental, architectural, legal and engineering professions, when employed in their professional capacity.
			Special attention to particular situations	NIL
			Information/Data collection and dissemination	2000-2003 ARs: According to the Government: The Federal Government and the provinces gather and disseminate a wide range of information and data on issues related to trade unions and collective bargaining.
		At international level	C.87 is ratified.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Monitoring, enforcement and sanctions mechanisms	2000-2003 ARs: According to the Government: Each Canadian jurisdiction has established an independent quasi-judicial labour relations board that includes worker and employer members, to administer its collective bargaining laws. These boards determine appropriate bargaining units, certify bargaining agents and determine various unfair labour practice complaints, such as interference, dismissal or discipline for union activity and failure to bargain in good faith, and may also rule on the legality of strikes or lockouts. Many boards also assist the parties in resolving labour relations issues in the workplace. Monitoring and enforcement mechanisms exist to ensure the implementation of the PR. Labour boards in each jurisdiction can issue orders providing a wide range of remedies and, typically, the orders may be filed with the appropriate Court and then become enforceable as orders of the Court. The Canadian Courts have the authority to determine whether federal, provincial or territorial legislation infringes on the PR under the Charter and may declare such legislation unconstitutional. In instances where the PR is not respected, the boards can order a party to comply with the statutory duty to bargain in good faith. A number of boards also have the authority to arbitrate first-agreement bargaining disputes. All jurisdictions provide conciliation and mediation assistance to the parties to assist them in concluding collective agreements.		
	Involvement of the social partners	2003-2004 ARs: According to the Government: Employers’ and workers’ organizations have been involved in: (i) labour-management conferences such as the biennial conferences organized by the Federal Mediation and Conciliation Service (FMCS) that address diverse subjects including best practices in industrial relations and collective bargaining and ways to improve labour-management relations; (ii) preventive mediation training programmes; (iii) projects funded by the Labour Management Partnerships Program that support the development of co-operative labour-management relations in Canada.		

	<p>Promotional activities</p>	<p>2009 AR: According to the Government: The Government has hosted, in February 2008, a tripartite roundtable discussion on the possible implications on Canada's international labour obligations of the June 2007 Supreme Court decision, with the participation of representatives of federal, provincial and territorial governments, workers' and employers' organizations, academics and labour law experts. In addition, a workshop on ILO issues was organized which included a presentation by a senior ILO official on C.98 and the implications of its ratification. The Federal Mediation and Conciliation Service (FMCS) provided training in the building of cooperative industrial relations including joint labour-management effectiveness interest based bargaining, grievance mediation, relationship building and facilitation of collective bargaining. An additional 15 projects under the Labour-Management Partnerships Program (LMPP) were organized providing funding to support and promote the development of cooperative labour-management relations in Canada.</p> <p>2008 AR: According to the Government: During fiscal year 2006-2007, the FMCS Preventive Mediation Program (PMP) provided training and assistance in the building of co-operative industrial relations across Canada and in joint labour-management committee effectiveness, interest based bargaining, grievance mediation, relationship building, and the facilitation of collective bargaining. There were also 23 active projects under the LMPP, which provided funding to support and promote the development of co-operative labour-management relations in the country. In September 2007, FMCS will hold its biennial conference where government and employers' and workers' representatives from across the country discussed best practices in industrial relations and collective bargaining and ways to improve labour-management relations. The Government of Canada supported ILO research on public sector collective bargaining.</p> <p>2007 AR: According to the Government: In September 2005, the FMCS biennial conference was attended by over 200 representatives of unions, employers and governments from across the country who discussed best practices in industrial relations and collective bargaining and ways to improve labour-management relations.</p> <p>-During fiscal year 2005-2006, FMCS's Preventive Mediation Program provided training and assistance in the building of co-operative industrial relations across Canada and internationally; training and assistance were provided in joint labour-management committee effectiveness, interest based bargaining, grievance mediation, relationship building, and the facilitation of collective bargaining in more than 61 instances throughout Canada; efforts are also being made to renew the Program and develop new modules that will address emerging issues in the workplace that impact on labour-management relations.</p> <p>-During the year, there were 35 active projects under the LMPP, which provides seed funding to support and promote the development of co-operative labour-management relations in Canada.</p> <p>-In March 2006, the International Labour Affairs hosted a workshop on ILO issues that was attended by representatives of Canadian federal, provincial and territorial governments. The purpose of the workshop was to generate dialogue on ILO issues, with a focus on the principle of freedom of association and collective bargaining. Representatives of the Canadian Labour Congress and the Canadian Employers Council participated in a tripartite panel discussion on Canada's priorities in the ILO. A noted Canadian academic addressed the issue of "The Challenges of Collective Bargaining in the Canadian Public and Parapublic Sectors". A panel of provincial government representatives shared their jurisdictions' practices with respect to coverage of collective bargaining legislation. There was also a presentation and discussion concerning follow-up to the Committee on Freedom of Association's decisions.</p> <p>2006 AR: According to the Government: A number of workshops on topics such as committee effectiveness training, interest-based negotiations, negotiation facilitation, conflict resolution training and relationship-by-objective training were held. Funding assistance was provided to 30 projects to assist efforts by unions and employers to improve labour-management relations. FMCS's 2005 conference brought key people involved in labour relations in Canada together to discuss critical industrial relations issues. The first phase of a project to assist the Chilean Ministry of Labour and Social Security to strengthen the institutional capacities of its mediation and conciliation services was completed.</p> <p>2002-2005 ARs: According to the Government: The following measures have been implemented to realize and promote the PR: (i) the training of government officials and social partners in the labour field; (ii) the negotiation of labour cooperation agreements; (iii) tripartite dialogue, national conferences, training, workshops and seminars; and (iv) international workshops.</p>
	<p>Special initiatives/Progress</p>	<p>NIL</p>

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers’ organizations	NIL
		Workers’ organizations	2000-2001 and 2008 ARs: The ICFTU raised the following issues: (i) the legislation in several Canadian provinces/territories do not comply with C.98 and no willingness of these provinces to harmonize their laws with the ILO Conventions; (ii) some categories of workers are excluded from the legal framework on the PR (members of the medical, dental, architectural, legal and engineering professions, when employed in their professional capacity, agricultural workers and privately employed domestics); (iii) there is an excessive government intervention in collective bargaining in the private sector, which provides ways fo the employer to bypass the union as collective bargaining agent and (iv) restrictions still persist on the right to form a union, bargain collectively and to strike, particularly in the public sector.
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the Government	<p>2007 AR: In response to the ICFTU’s observations, the Federal Government made the following additional observations: (i) since 2005, there have been a number of amendments to labour laws in Ontario that strengthen protection for the exercise of collective bargain rights, (ii) in British Columbia, the province is enjoying an unprecedented level of labour peace thanks to the recent success of this year’s public sector bargaining that saw the conclusion of 139 collective agreements (as of December 11, 2006). Furthermore, the British Columbia government is continuing an industrial Inquiry Commission review to examine the bargaining structure and to build on the success on the latest round of bargaining to ensure that negotiated settlements are reach in future rounds of bargaining.</p> <p>2001 and 2007 ARs: In response to the ICFTU’s observations, the Federal Government made the following observations: (i) the PR is respected and promoted in Canada; (ii) in each province, there are labour laws promoting and regulating collective bargaining and there are independent labour relations boards in charge of administering the legislation; (iii) the legislation encourages the parties to engage in meaningful bargaining; (iv) the importance of conciliation and mediation as a means of helping the parties to come to an agreement voluntarily is recognized across Canada; (v) Canadian legislation generally does not restrict the right of employers and workers to participate in collective bargaining; (vi) groups such as members of the medical, dental, architectural, legal and engineering professions, when employed in their professional capacity, agricultural workers and privately employed domestics are excluded from coverage under the legislation in some jurisdictions, but are nevertheless entitled to negotiate with their employers on a voluntary basis; (viii) in the determination of who is an employee for the purpose of collective bargaining, jurisdictions generally exclude workers who exercise managerial functions or who act in a confidential capacity in matters relating to industrial relations, so as to avoid conflict of interest or domination of unions, (ix) all jurisdictions ensure the right to negotiate collective agreements and promote good faith bargaining between the parties.</p> <p>2000 and 2007 ARs: In response to the ICFTU’s observations, the Federal Government referred to GB.274/2 which described the Declaration follow-up and suggested that a number of the questions raised by the ICFTU would fall outside the scope of the Declaration follow-up. The Government further indicated that it was not able to respond to a number of other ICFTU comments as they contained inaccuracies that made them unclear. The Government referred the Office to Canada’s report on the principles of freedom of association and the right to collective bargaining, which provides complete and accurate information with respect to collective bargaining legislation in Canada, including protections against employers’ interference and other unfair labour practices.</p>	
TECHNICAL COOPERATION	Request	2003 AR: The Federal Government would be interested in the use of ILO communication products for the promotion of the 1998 ILO Declaration.	
	Offer	ILO	
EXPERT-ADVISERS’ OBSERVATIONS/ RECOMMENDATIONS	2008 AR: The ILO Declaration Expert-Advisers (IDEAs) encouraged Canada to initiate the necessary labour law reforms to remove the obstacles to ratification of C.98. They acknowledged the high number of promotional activities concerning the realization of the PR in Canada (and some other countries), and encouraged the Office to maintain its support to these activities. They also noted the decision adopted by the Supreme Court of Canada, which includes the right to collective bargaining under the Canadian Charter (Cf. Paragraphs 32, 34 and 35 of the 2008 AR Introduction – ILO: GB.301/3).		
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL		



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: CHINA

FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , since the start of the Annual Reviews (ARs) in 2000.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , involvement of the China Enterprise Confederation (CEC) and the All China Federation of Trade Unions (ACFTU) by means of consultations and communication of Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by the CEC. 2008 AR: Observations by the CEC. 2007 AR: Observations by the CEC.	
	Workers' organizations	2009 AR: Observations by the ACFTU. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the ACFTU and the ITUC. 2007 AR: Observations by the ACFTU and the International Confederation of Free Trade Unions (ICFTU). 2000 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	China has ratified neither the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) (C.87) nor the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98).
		Ratification intention	NIL
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	YES The 1999 Constitution of the People's Republic of China (article 35) provides that "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration".

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Policy/Legislation and/or regulations	<ul style="list-style-type: none"> Legislation <p>2009 AR: According to the Government: A new Law on Mediation and Arbitration of Labour Disputes adopted at the 31st Session of the Standing Committee of the 10th National People's Congress on 29 December 2007, entered into force on 1 May 2008.</p> <p>2008 AR: According to the Government: the Labour Law Contract was adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on 29th June 2007 and will enter into force as of 1st January 2008. Section 1 of Chapter 5 specifies collective contracts (Articles 51-56).</p> <p>2007 AR: Corporate Law (section 18); Law on Chinese-Foreign Contractual Joint Ventures (section 14); Law on Foreign-Capital Enterprises (section 13).</p> <p>2003 AR: The Trade Union Law, 1950 (and its subsequent amendments) and the Labour Law relate to the principle and right (PR).</p> <ul style="list-style-type: none"> Regulations <p>The regulations concerning the Congress of Staff and Workers in Industrial Enterprises Owned by the Whole People (section 9) relate to the PR.</p>	
		Basic legal provisions	(i) The 1999 Constitution (article 35); (ii) the 1992 Trade Union Law (section 3), (iii) the Labour Law (sections 33 and 35), (iv) the Interim Regulation on Private Enterprises, (v) the Regulations concerning the Registration of Social Organizations (sections 9 and 13) and (v) the Regulations on Collective Contracts (section 33).	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	<p>2000-2004 ARs: Prior government authorization is necessary to establish employers' organizations (section 9 of the Regulations concerning the Registration of Social Organizations). Freedom of association can be exercised by all categories of employers.</p> <p>However, employers cannot exercise the right to collective bargaining.</p>
			For Workers	<p>2008 AR: According to the ACFTU: The right to freedom of association and collective bargaining is protected by national laws and regulations and workers have the full right to organize.</p> <p>2000-2004 ARs: Government authorization is not required to establish a workers' organization or to conclude collective agreements.</p> <p>Freedom of association can be exercised at enterprise, sector/industry, national and international levels by all workers in the public service, medical professionals, teachers, agricultural workers, workers engaged in domestic work, workers in export processing zones (EPZs) or enterprises/industries with EPZs status, migrant workers, workers of all ages and in the informal economy. The right to collective bargaining can be exercised only at enterprise and sector/industry levels, by agricultural workers, workers engaged in domestic work, workers in EPZs or enterprises/industries with EPZs status, migrant workers, workers of all ages and in the informal economy.</p>
			Special attention to particular situations	<p>2003-2004 ARs: According to the Government: workers and employers at the enterprise level are given particular attention with regard to the right to collective bargaining.</p>

			Information/ Data collection and dissemination	<p>2008 AR: The Government indicated that the number of collective contracts at the end of 2006 had reached 521.1 thousand covering in total 9.06 million workers. According to the ACFTU: the national base trade unions increased by 149 thousand in 2006 with 19.648 million new members, leading to a total number of nearly 170 millions members with a membership rate of 73.6%.</p> <p>2002 AR: According to the Government: By the end of 2000, 67,195 foreign-funded enterprises and 432,704 private enterprises had set up trade unions with respective total memberships of 5,921,202 and 7,889,900; the number of collective contracts signed exceeded 240,000, covering more than 60 million workers.</p> <p>2001 AR: According to the Government: By the end of 1999, there were 52,160 foreign-owned enterprises, 117,469 private enterprises with trade unions and 220,000 collective agreements covering 57 million workers and staff members.</p> <p>2000 AR: According to the Government: There are statistics concerning the membership of employers' (436,000 members) and workers' organizations (130 million members). The number of collective contracts had reached 150,000 by the end of 1998, involving more than 50 million staff and workers.</p>
		At international level	NIL	
	Monitoring, enforcement and sanctions mechanisms	<p>2009 AR.: According to the Government: A Labour Inspection Bureau was established within the Ministry of Human Resources and Social Security in July 2008 with a view to strengthening labour inspection in the country.</p> <p>2005 AR: According to the Government: In cases where the PR has not been respected, the Government will ask the parties concerned to make "correction by coordination".</p> <p>2003-2004 ARs: According to the Government: Specific measures have been implemented to respect and promote this PR, such as: (i) a inspection/monitoring system, (ii) civil/administrative sanctions, (iii) a special institutional machinery, (iv) capacity building of responsible government officials, (v) training of other government officials, (vi) capacity building for employers' and workers' organizations, and others have been envisaged, such as: (i) legal reform on labour law and other relevant legislation and (ii) penal sanctions. In cases where the PR has not been respected, the Government will ask the parties concerned to make "correction by coordination".</p> <p>2000 AR: According to the Government: (i) Labour inspection, (ii) people's supervision and (iii) the Government's engagement in international cooperation.</p>		
	Involvement of the social partners	<p>2003-2004 ARs: According to the Government: Tripartite discussions of issues have been implemented to realize the PR.</p>		

	Promotional activities	<p>2009 AR: According to the Government: The Ministry of Human Resources and Social Security carried out in April 2008 a nationwide Rainbow Project aiming at extending the coverage of collective consultations and collective contracts. The Project gives priority to wage collective consultation on wages and in non-public enterprises. Its also aims at improving capacity building and effectiveness of collective consultations, so as to establish a collective consultation and collective contract system in all types of enterprise within 5 years.</p> <p>According to the ACFTU: The ACFTU has issued the Opinion on Carrying out the Collective Consultation Offer Project in 2008 to promote collective consultations on wages throughout the country. Ninety per cent of the enterprises in the Jiangsu Province are carrying out a collective consultation on wages once a year.</p> <p>2008 AR: The Government and the CEC indicated that they had, together with the ACFTU, adopted the Opinion on Developing Industry-wide and Area-wide Collective Negotiation on 17th August 2006. These specify the importance, scope, content, procedure, for dispute resolution and organization of the industry-wide and area-wide collective contracts.</p> <p>The Government added that it had improved the collective bargaining and collective contract system by: (i) further enhancing the coverage of collective contracts and promoting the area-wide and industry-wide collective negotiation; (ii) emphasizing on the signing of specific collective contracts dealing with wages, working hours quota etc. and (iii) developing training activities and advertisements. The CEC also stated that it would organize training activities on collective bargaining for employers, and draw a stand of collective bargaining. It also added that the CEC was a member of the national collective contract committee.</p> <p>2007 AR: The Government indicated that it had implemented the following measures in relation to the PR:</p> <ol style="list-style-type: none"> (1) Extension of the collective consultation and collective contract system to comprehensively promote the Five Year Plan of Implementation Program on Administration by Law issued by the State Council on March 22, 2004; (2) Under the Circular on the Publicity Syllabus of further Enforcing the Work on Employment and Reemployment issued on December 3rd 2005, the Government should build up the collective consultation system, harmonize the benefits of the enterprises and the workers to increase the stability of the employment of the workers in instances where the enterprises reduces the staff; (3) Under the Main Point of the Labour and Social Security Work in 2006, the Government focuses on extending or signing once again collective contracts, extend the coverage of the collective contract, make great efforts to promote the regional collective consultation with middle and small non-stated-owned enterprises, advances the collective consultation on the labour standards on wages distribution, working time, labour quota and so on; and (4) Under the Circular on Further Resolving the Problem of the Wages in arrears for the Migrant Workers from the rural areas, which was issued on 2 September 2005, the Government would guide and promote the enterprises, especially those recruiting more migrant workers from the rural areas to develop the collective consultation on wages, guarantee systematically the legal rights of increasing wages of the migrant workers. And the Government would develop actively the region and industry collective consultation on wages, set up and improve the normal mechanism of increasing and adjusting the wages, and ensure that migrant workers share the outcomes of the reforming and developing of the enterprises. <ul style="list-style-type: none"> – The CEC stated that it is carrying out a pilot programme on collective contracts and collective consultations on wages in the developing district of Dalian City, Liaoning Province. – The ACFTU held a national meeting on promoting and organizing trade unions in the foreign enterprises on 30 March 2006; passed the Provisional Regulation on Enforcing the Work of Trade Unions in the enterprises on 6 July 2006; involved in the supervision of the implementation process of the Labour Law in 2005. – The ACFTU held a training course on the International Labour Standards (ILS) and Collective Bargaining with ILO and another training course for collective bargaining trainers. <p>2003-2005 ARs: According to the Government: Specific measures have been implemented to promote and realize the PR in the country: (i) training of other government officials; (ii) capacity building for employers' and workers' organizations; (iii) awareness-raising/advocacy.</p> <p>2002 AR: The Government thanked the ILO for assisting the ACFTU with training to wage negotiators and the CEC (Chinese Entrepreneurs' Association, Chinese Enterprises' Federation) by undertaking a national survey on the role of employers' associations in tripartism.</p>
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	Special initiatives/ Progress	<p>2009 AR: According to the Government: Section 8 of the new Law on Mediation and Arbitration of Labour Disputes, 2007, provides that the labour administrative departments, together with labour unions and enterprise representatives shall establish a tripartite labour relation mechanism to study and resolve jointly major issues of labour disputes.</p> <p>The ACFTU indicated that it had carried out, from June to September 2008, a special programme to promote the establishment of trade unions in multinational corporations, including the top 500 global corporations in China.</p> <p>2008 AR: According to the ITUC: The Draft labour contract law was first discussed at the 19th meeting of the NPC and published online in March 2006. The draft is significant for several reasons. Firstly because of the unprecedented level of public debate and consultation– according to reports the draft received some 200,000 online comments. Secondly the draft law addresses some of the crucial failings of the current labour law and provides specific penalties and remedies for failing to observe labour laws and regulations. It seeks to clarify the nature of a labour relationship between workers and employers – including those many instances where workers have no formal contract. It includes penalties for companies, which fail to provide proper written contracts, penalties for breaking contract terms. Significantly, it also attempts to legislate on the fast growing use of contract labour. The law also appears to bolster the role of trade unions in discussions on redundancies and other major changes. The first draft has been very publicly criticized by European and American business associations and the second draft was published in December 2006. Certain aspects relating to the role of the trade union have been reduced, as have some of the penalties for companies. However the law remains a significant step forward in the protection of labour rights. As with most legislation in China the most crucial issue is the implementation of the law. A final version was expected to be issued in the spring of 2007.</p> <p>2005 AR: According to the Government: The adoption of the Regulations on Collective Contracts in May 2004 can be considered as a major change regarding this PR.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	2008 AR: According to the CEC: collective contracts do not apply to most private and small enterprises.

		<p>Workers' organizations</p>	<p>2009 AR: The ACFTU indicated that it had participated actively in drafting and implementation of the Employment Promotion Law and the Law on Mediation and Arbitration of Labour Disputes. The ITUC reiterated the observations it made under the previous AR (2008) concerning China, in particular as regards: (i) the absence of freedom of association; (ii) trade union monopoly; (iii) the absence of law governing collective bargaining procedures (there are regulations on collective contracts only); (iv) the absence of legal protection for the right to strike; (v) the repression made on all attempts to establish independent trade unions; and (vii) the ineffectiveness of collective bargaining.</p> <p>2008 AR: According to the ITUC: (i) some 3,000 workers from a Hong Kong-owned furniture factory in Shenzhen staged a protest on 3 April 2006 against long working hours and poor working conditions; the demonstration was dispersed by hundreds of riot police and three senior executives from a Shenzhen sporting goods factory were detained by police for allegedly "inciting workers to block roads"; (ii) sub-contracted migrant workers at the Huaen Building construction site in Beijing stopped work after not receiving overdue wages. On 19 July 2006, several of the workers were assaulted by hired men at the site and two were hospitalised; (iii) on 22 July 2006, workers from a private company protested against low wages and poor living conditions. In the evening, factory security and police sent in riot control vehicles and personnel to control the riot but the following day the conflict intensified. Scores of workers were injured, or detained but later believed to be released; (iv) on 26 August 2006, migrant workers in a company in Nanjing protested against massive unpaid wages. The workers were detained for obstructing traffic and two workers were put in administrative detention for organising the protest; (v) on 31 July and 1 August 2006, some 300 unemployed teachers from 20 different towns and townships in Suizhou, Hubei Province gathered in front of the government offices to submit a petition, demanding help from the Government to obtain livelihood assistance and benefits such as pensions and medical insurance. The teachers tried using the courts to get a decision on their status, but their legal representative dropped the case after receiving threats. Several teachers were forcibly taken to a "study camp" in mid July 2006 and were only released after 48 days; (vi) in September 2006, in the run up to National Day celebrations, a group of workers in Suining City, Sichuan province, were beaten after petitioning the local authorities for compensation on their labour dispute with their previous employer. The workers had been formally employed at a state owned guesthouse and had been laid off after this guesthouse went bankrupt and its assets were sold at a low price. The workers claimed corruption and were claiming unpaid unemployment benefits. The group of 40 workers was forcibly removed from the local Party Committee offices and two female workers were hospitalized as a result. Two other women were detained while others went into hiding for fear of further arrests. It is not known if all have since been released; (vii) on 7 December 2006, some 400 workers from the Shenzhen Safari Park in South China went on strike over inadequate compensation, unfair layoffs and unpaid wages during the privatization of the former state owned zoo. After the strike began, some 70 police officers entered the park and stopped workers from arranging protest signs; and (viii) laid off protestors were detained by public security officials in Beijing during a protest march on 15 December 2006 - some 50 protestors were detained in the afternoon and later released and send back to their hometowns.</p>
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	According to the Government	<p>2003-2005 ARs: According to the Government: the main difficulties encountered in China in realizing the PR are the lack of capacity of responsible government institutions and the lack of capacity of employers' and workers' organizations.</p> <p>2000, 2002 ARs: In response to the ICFTU's comments, the Government raised the following observations: (i) China has always been committed to the protection of workers' fundamental interests and rights and has fulfilled its reporting obligations as regard the Follow-up to the Declaration; (ii) given that the follow-up should not constitute a complaint-based procedure nor a double scrutiny practice, the Government would not make any observations on the substance of the communication from the workers' organization.</p>
TECHNICAL COOPERATION	Request	<p>2009 AR: The Government requested the ILO's cooperation for training labour inspectors.</p> <p>2008 AR: According to the Government: ILO technical cooperation is requested for assistance on the legal reform, training and awareness raising activities. The CEC indicated that the capacity of employers' bargaining techniques should be enhanced and training activities should be organized.</p> <p>2007 AR: According to the Government: Needs for ILO technical cooperation to facilitate the realization of the PR in the country exist in particular for legal reform and training.</p> <p>2005 AR: According to the Government: Needs for ILO technical cooperation to facilitate the realization of this PR in the country exist in particular in the following areas, in order of priority: (1) strengthening capacity of employers' and workers' organizations; and (2) sharing of experiences across countries/regions.</p>
	Offer	ILO

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) observed that the Annual Review had made it possible to highlight and follow up country situations that required greater attention, and that some countries, such as China (as well as the Gulf States and new member States, in particular in the South Pacific), had made important efforts during this process. However, according to them, more needed to be done. The IDEAs noted with concern that China (and another State) has not yet expressed its intention to ratify C.87 and C.98. Nonetheless, they also welcomed the efforts made by China (Adoption of a Labour Law Contract with provisions on collective bargaining) in implementing the principle and right and called upon the Government to provide further information on its new legislation and its implications. The IDEAs drew the attention to the practice in some countries, including China, where only one official trade union was allowed in practice and where some unions are subject to government's interference or influence. In this regard, they recalled the following: "the right to official recognition is an essential aspect of the right to organize as it allows employers' and workers' organizations to be in a position to play their roles efficiently. Furthermore, any government intervention in employers' and workers' organizations' internal affairs (right to establish and join organizations of their own choosing, without distinction whatsoever and without previous authorization, right to draw up internal constitutions and rules, right to elect their representatives in full freedom, etc.) constitutes interference in the functioning of these organizations, which is a denial of the principle and right" (Cf. Paragraphs 12, 30, 34 and 36 of the 2008 AR Introduction – ILO: GB.301/3).</p> <p>2007 AR: The ILO Declaration Expert-Advisers (IDEAs) listed China among the four countries in which 52 per cent of the total labour force of ILO member States live and which have not yet ratified C.87 and C.98. This leaves many millions of workers and employers without the protection offered by these instruments in international law, even if the governments concerned may consider that their law and practice are sufficient. (Paragraph 32 of the 2007 AR Introduction). Furthermore, the IDEAs noted with concern that several countries had not yet expressed their intention to ratify and urged China to do so. (Cf. Paragraph 33 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The ILO Expert-Advisers (IDEAs) commended China for its continuing dialogue with the Office and hoped that the positive measures taken would be expanded upon (Cf. Paragraph 12 of the 2005 Annual Review Introduction – ILO: GB.3292/4).</p> <p>2003 AR: The IDEAs commended China for requesting the ILO's technical cooperation, through the Annual Review process (Cf. Paragraph 4 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



BASE DE RÉFÉRENCE PAR PAYS AU TITRE DE L'EXAMEN ANNUEL DE LA DÉCLARATION DE L'OIT (2000-2009) ¹: GUINÉE-BISSAU

LIBERTÉ D'ASSOCIATION ET RECONNAISSANCE EFFECTIVE DU DROIT DE NÉGOCIATION COLLECTIVE (LANC)

SOUSSION DES RAPPORTS	Accomplissement de l'obligation de rapport par le gouvernement	OUI , sauf pour les examens annuels (EA) de 2001, 2004 et 2006.	
	Implication des organisations d'employeurs et de travailleurs dans l'élaboration des rapports	OUI , implication positive et active de la Chambre de l'agriculture, du commerce et de l'industrie (CACI), de la Chambre du commerce, de l'industrie et de l'agriculture (CCIA), de la Confédération générale des syndicats indépendants (CGSI/GB) ainsi que de l'Union nationale des travailleurs de Guinée (UNTG) par voie de communication des rapports gouvernementaux.	
OBSERVATIONS DES PARTENAIRES SOCIAUX	Organisations d'employeurs	EA 2008: Observations de la CACI Observations de la CCIA	
	Organisations de travailleurs	EA 2008: Observations de la CGSI/GB Observations de l'UNTG EA 2007: Observations de la Confédération internationale des syndicats libres (CISL).	
EFFORTS ET PROGRÈS ACCOMPLIS DANS LA RÉALISATION DU PRINCIPE ET DROIT	Ratification	Etat des ratifications	La Guinée-Bissau a ratifié en 1977 la convention (n° 98) sur le droit d'organisation et de négociation collective, 1949 (C.98). Toutefois, elle n'a pas encore ratifié la convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948 (C.87)
		Intention de ratification	OUI, depuis 2002, pour la C.87. EA 2009: Selon le gouvernement: L'instrument de ratification de la C.87 a été signé par le Chef de l'Etat et va être très prochainement transmis au BIT.

¹ Les bases de référence par pays continues dans l'examen annuel de la Déclaration de l'OIT sont fondées sur les éléments suivants, dans la mesure de leur disponibilité: les rapports de gouvernements, les observations des organisations d'employeurs et de travailleurs, les études de terrain préparées sous l'égide du pays et du BIT, ainsi que des observations/recommandations des Experts-conseillers de la Déclaration de l'OIT et du Conseil d'administration du BIT. Pour de plus amples informations sur la réalisation du principe et droit dans un pays donné concernant une convention ratifiée ou des cas éventuels qui ont été soumis au Comité de la liberté syndicale de l'OIT, prière de voir: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>.

			<p>EA 2008: Selon le gouvernement, le processus de ratification de la C.87 est toujours pendant et est tributaire de la révision législative qui est en cours en Guinée-Bissau. Qui plus est, en dépit du fait que la ratification de la C.87 a été approuvée par ordonnance (loi n° 10/91 du 3 octobre 1991), elle n'a pas encore été promulguée par le Président. En conséquence, le processus devra être repris depuis le début.</p> <p>Selon la CCIA, la CACI et la CGSI/GB, la procédure de ratification de la C.87, par voie d'ordonnance (loi n° 10/91 du 3 octobre 1991) n'a pu être finalisée.</p> <p>EA 2007: Le gouvernement a déclaré que la ratification de la C.87 demeurerait une préoccupation fondamentale.</p> <p>EA 2003: Le gouvernement a indiqué que la ratification de la C.87 avait été soumise à l'approbation de l'Assemblée nationale.</p> <p>EA 2002: Le gouvernement a indiqué qu'il se préoccupait et qu'il s'efforçait de reprendre le processus de ratification de la C.87.</p>
	Reconnaissance du principe et droit (perspective(s), moyens d'action, dispositions juridiques principales)	Constitution	OUI , la liberté d'association est garantie par les articles 45 et 47 de la Constitution.
		Politique, législation et/ou réglementation	Législation: La législation nationale reconnaît la liberté d'association notamment par la loi n° 8/91 du 3 octobre 1991 et le droit de grève, par la loi n° 9/91 du 3 octobre 1991.
		Dispositions juridiques principales	<ul style="list-style-type: none"> i) Constitution (art. 45 et 47); ii) loi générale du travail (art. 164 et suiv.); iii) loi n° 8/91 du 3 octobre 1991; et iv) loi n° 9/91 du 3 octobre 1991.
		Décisions judiciaires	RAS

	Exercice du principe et droit	Au niveau national (entreprise, secteur/industrie, national)	Pour les employeurs	<p>L'autorisation ou l'approbation du gouvernement n'est pas nécessaire pour constituer une organisation d'employeurs ou pour conclure des conventions collectives. Leurs statuts doivent seulement être déposés devant le notaire pour acquérir une personnalité juridique.</p> <p>Tous les employeurs peuvent exercer la liberté d'association et le droit de négociation collective dans le cadre de l'entreprise, du secteur ou de l'industrie, ainsi qu'au niveau national (et international).</p>
EFFORTS ET PROGRÈS ACCOMPLIS DANS LA RÉALISATION DU PRINCIPE ET DROIT	Exercice du principe et droit	Au niveau national (entreprise, secteur/industrie, national)	Pour les travailleurs	<p>L'autorisation ou l'approbation du gouvernement n'est pas nécessaire pour constituer une organisation de travailleurs ou pour conclure des conventions collectives. Leurs statuts doivent seulement être déposés devant le notaire pour acquérir une personnalité juridique.</p> <p>La liberté d'association et le droit de négociation collective peuvent être exercés dans le cadre de l'entreprise, du secteur ou de l'industrie, ainsi qu'au niveau national (et international) par les catégories suivantes de personnes:</p> <ul style="list-style-type: none"> i) médecins; ii) enseignants; iii) travailleurs agricoles; iv) travailleurs domestiques; v) travailleurs des zones franches (ZFE) ou des entreprises/industries assimilées; vi) travailleurs migrants; vii) travailleurs de tout âge; et viii) travailleurs de l'économie informelle. <p>Tous les travailleurs du service public peuvent exercer le droit de négociation collective; toutefois, les militaires, la police et le corps paramilitaire ne peuvent exercer la liberté d'association.</p>
			Attention spéciale accordée à des situations particulières	EA 2002 et 2007: Selon le gouvernement, les femmes.
			Collecte et diffusion	EA 2007: Le gouvernement a indiqué qu'il avait demandé aux partenaires sociaux des informations et statistiques, mais en vain.

			d'informations et/ou de données	EA 2000: Selon le gouvernement, des statistiques sur le nombre de syndicats sont disponibles, à l'exception du secteur non structuré.
		Au niveau international		Selon le gouvernement, il n'existe aucune restriction particulière pour l'affiliation des organisations d'employeurs ou de travailleurs au niveau international.
	Mécanismes de contrôle, mise en oeuvre et/ou sanctions	<p>EA 2008: Selon le gouvernement, il existe une possibilité de recours devant l'inspection du travail ou la justice en cas de licenciement injustifié.</p> <p>EA 2002 et 2007: Selon le gouvernement, les dispositifs mis en place pour garantir le respect de la liberté d'association et du droit de négociation collective sont l'inspection du travail et les autres mécanismes de contrôle. En cas de non-respect du principe et droit (PED), il y a en général recours à la conciliation et à la médiation. En cas d'échec, des procédures judiciaires concernant la réparation ainsi que des sanctions civiles, administratives ou pénales sont prévues.</p>		
	Implication des partenaires sociaux	<p>EA 2008: Selon le gouvernement, une cellule tripartite de suivi relatif au PAMODEC a été mise en place. Ce programme a également réalisé une étude nationale ainsi qu'un Atelier national tripartite sur les principes et droits fondamentaux au travail.</p> <p>De plus, la Chambre de l'agriculture, du commerce, et de l'industrie (CACI) a été créée en 2004.</p> <p>EA 2003: Selon le gouvernement: Il y a un examen triparti des questions à l'ordre du jour.</p>		
	Activités promotionnelles	<p>EA 2009: La validation du programme PAMODEC en Guinée-Bissau a été faite au cours d'un atelier national tripartite axé sur l'étude nationale sur le suivi de la Déclaration. Les recommandations de l'atelier sont en cours d'exécution, avec notamment une formation de formateurs en matière de principes et droits fondamentaux au travail.</p> <p>EA 2008: Selon le gouvernement, des séances de formation sont organisées pour les jeunes professionnels dans la fonction publique par le Centre de formation de promotion sociale. Le lancement du PAMODEC ainsi qu'une étude de cas au niveau national sur le suivi de la Déclaration ont été initiés en juillet et leur validation est prévue pour octobre 2007.</p> <p>EA 2003: Selon le gouvernement, le renforcement des capacités des organisations de travailleurs ainsi que des activités de sensibilisation/mobilisation sont effectués.</p>		
	Initiatives spéciales/Progrès	<p>EA 2008: Le gouvernement a indiqué qu'une nouvelle entité tripartite sous le nom de «concertation sociale» avait été créée. Le programme PAMODEC a également réalisé une étude nationale ainsi qu'un Atelier national tripartite sur les principes et droits fondamentaux au travail.</p> <p>L'autorisation ou l'approbation du gouvernement n'est pas nécessaire pour constituer une organisation d'employeurs ou de travailleurs ou pour conclure des conventions collectives.</p> <p>EA 2002: Création d'une nouvelle organisation d'employeurs: la Chambre du commerce, de l'industrie et de l'agriculture (CCIA).</p>		

DIFFICULTÉS DANS LA RÉALISATION DU PRINCIPE ET DROIT	Selon les partenaires sociaux	Organisations d'employeurs	EA 2008: Selon la CCIA et la CACI: i) les organisations d'employeurs sont informées mais pas suffisamment impliquées dans le processus de ratification; ii) il y a une absence de politique de sensibilisation sur l'importance des normes fondamentales; iii) instabilité politique; iv) lourdeurs bureaucratiques et difficultés dans la gestion des finances publiques; v) faible niveau d'engagement politique pour la mise en œuvre des normes de l'OIT; et vi) faible implication des partenaires sociaux dans la conduite des affaires gouvernementales.
		Organisations de travailleurs	EA 2008: Selon l'UNGT et la CGSI/GB: i) il est nécessaire de diffuser les principes de la liberté syndicale à travers le pays à travers l'élaboration de séminaires ou les médias; ii) les travailleurs sont souvent renvoyés par les employeurs pour avoir participé à une grève; iii) ignorance des normes fondamentales du travail et de la législation nationale; iv) faiblesse des moyens de l'administration du travail; v) manque de formation des syndicats en matière de négociation collective; vi) caractère très limité du champs de la négociation collective qui ne couvre pour l'instant que le secteur bancaire. Selon la CISL: i) Le droit de négociation collective n'est pas inscrit dans la Constitution et celle-ci ne protège pas non plus ce droit; ii) en pratique, il n'y pas de négociation sur les salaires et les syndicats sont harcelés lorsqu'ils appellent à la grève. EA 2007: Selon la CISL: Le gouvernement n'a cessé de harceler les dirigeants de l'Union nationale des travailleurs de Guinée (UNGT) du fait de leurs appels à la grève.
	Selon le gouvernement	EA 2009: Le gouvernement espère que le Programme PAMODEC aidera le pays à élaborer une législation adéquate concernant le principe et droit. EA 2008: Le gouvernement a indiqué qu'il n'existait pas encore de législation sur la négociation collective et le droit à la liberté d'association. De plus, les travailleurs sont souvent renvoyés par les employeurs pour avoir participé à une grève. EA 2002: Selon le gouvernement: Il existe des difficultés dans la mise en œuvre de réformes juridiques visant à promouvoir le PED.	
COOPÉRATION TECHNIQUE	Demande	EA 2009: Le gouvernement espère que le BIT aidera le pays à élaborer prochainement un programme national sur le travail décent. EA 2008: Le gouvernement a sollicité l'assistance technique du BIT pour l'élaboration d'une législation sur la liberté d'association et la reconnaissance effective du droit de négociation collective. EA 2003: Le gouvernement souhaiterait une coopération technique du BIT dans les domaines suivants, par ordre de priorité: (1) Renforcement du dialogue triparti, renforcement des capacités des organismes gouvernementaux responsables, échange d'expériences entre pays ou régions; (2) évaluation en coopération avec le BIT des difficultés constatées et de leurs incidences sur la mise en œuvre, formation des fonctionnaires d'autres services, renforcement des capacités des organisations d'employeurs, Renforcement des capacités des organisations de travailleurs; (3) mise en œuvre de sensibilisation, initiation juridique et mobilisation, renforcement de la collecte de données et de l'aptitude à tenir et analyser des statistiques.	

	Offre	EA 2008: BIT/PAMODEC.
OBSERVATIONS/ RECOMMANDATIONS DES EXPERTS- CONSEILLERS	<p>EA 2008: Les Experts-conseillers de la Déclaration sont encouragés à noter que certains pays, dont la Guinée-Bissau, qui rencontrent des difficultés structurelles, ont été en mesure de fournir un rapport avec l'assistance du BIT. Ils ont également encouragé en particulier le gouvernement de la Guinée-Bissau à adopter une législation de nationale sur le principe et droit, en coopération avec le Bureau et le Programme d'appui à la mise en œuvre de la Déclaration – PAMODEC (voir paragr. 25 et 32 de l'Introduction à l'examen annuel de 2008, BIT, document GB.301/3).</p> <p>EA 2007: Les Experts-conseillers de la Déclaration de l'OIT notent que la Guinée-Bissau fait partie des pays qui ont indiqué leur intention de ratifier les C.87 et C.98 depuis plusieurs années sans qu'aucun progrès ne soit intervenu (voir paragr. 33 de l'Introduction à l'examen annuel de 2007, BIT, document GB.298/3).</p> <p>EA 2003: Les Experts-conseillers de la Déclaration notent avec satisfaction que le gouvernement de la Guinée-Bissau a souligné qu'il est nécessaire de renforcer les capacités des organisations d'employeurs et de travailleurs et qu'il sollicite l'aide du BIT à cet effet. Le Bureau devrait mobiliser ses ressources aussi rapidement que possible, sous réserve naturellement que le renforcement envisagé ne concerne pas des structures de syndicat unique imposé ou des organisations d'employeurs. A la lumière des demandes faites par la Guinée-Bissau qui a sollicité la coopération du BIT pour l'évaluation des difficultés et leur incidence sur la réalisation des principes et droits de la liberté d'association et de la négociation collective, ils souhaiteraient que le Conseil d'administration demande que des contacts de haut niveau soient pris immédiatement entre le Bureau et deux ou trois pays qui ne bénéficient pas encore de projets techniques du BIT dans ce domaine (voir paragr. 73 et 74 de l'Introduction à l'examen annuel de 2003, BIT, document GB.286/4).</p>	
OBSERVATIONS/ RECOMMANDATIONS DU CONSEIL D'ADMINISTRATION	RAS	



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: INDIA

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , since the start of the Annual Reviews (ARs) in 2000, but no change report for the 2007 and the 2009 Ars.
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of the employers' (the All India Association of Industries – AIAI, the PHD Chambers of Commerce and Industries – PHDCCI, the Council of Indian Employers - CIE; the Employers' Federation of India – EFI; the All India Organisation of Employers – AIOE; the Standing Conference of Public Enterprises - SCPE; the All India Manufacturers' Organisation – Lagdhu Udyog Bharati – AIMO and workers' organizations (Bharatiya Mazdoor Sangh – BMS, the Indian National Trade Union Congress – INTUC); the Centre of Indian Trade Unions – Hind Mazdoor Sabha-HMS; the All India Trade Union Congress – AITUC and National Front of Indian Trade Unions – NFTI) through communication of the Government's reports.
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observation by the AIAI. Observation by the PHDCCI. 2008 AR: Observations by the CIE, comprised of 81 federations. 2007 AR: Observations by the AIMO. 2003 AR: Observations by the AIMO.

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

	Workers' organizations	<p>2009 AR: Observations by the INTUC. Observations by the International Trade Union Confederation (ITUC).</p> <p>2008 AR: Observations by the AITUC. Observations by the BMS. Observations by the ITUC.</p> <p>2007 AR: Observations by the AITUC. Observations by the HMS. Observations by the INTUC. Observations by the International Confederation of Free Trade Unions (ICFTU).</p> <p>2006 AR: Observations by the ICFTU.</p> <p>2005 AR: Observations by the AITUC. Observations by the ICFTU. Observation by the HMS.</p> <p>2004 AR: Observations by the AITUC. Observations by the HMS. Observations by the ICFTU.</p> <p>2003 AR: Observations by the AITUC. Observations by the HMS. Observations by the ICFTU.</p> <p>2002 AR: Observations by the ICFTU.</p> <p>2001 AR: Observations by the ICFTU.</p>	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	India has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C. 98).

		Ratification intention	<p>Unable to ratify C.87 and C.98 at the current stage.</p> <p>2009 AR: The Government reiterated its statement on ratification under the 2008 AR. The AIAI, the PHDCCI and the INTUC mentioned their strong support to the ratification of C.87 and C.98 by India.</p> <p>2008 AR: According to the Government: The practice in India has been to ratify the ILO Conventions only when the national legislations and practices have achieved full compliance with the provisions of the international standards. Therefore, the ratification of C.87 and C.98 is not possible at the current stage. The CIE, the AITUC and the BMS expressed their support to the ratification of C.87 and C.98.</p> <p>2007 AR: According to HMS and INTUC: Ratification of all the remaining unratified Fundamental Conventions is supported by all trade unions of India.</p> <p>2006 AR: The Government indicated that ratification of C.87 and C.98 would involve granting certain rights that are prohibited under the statutory rules for government employees, namely the right to strike and criticize openly government policies, the right to accept freely financial contribution, the right to join freely foreign organizations, etc. Since there is no change in the basic policy of the Government of India, it reiterates its stand that it is not possible to ratify these two Conventions.</p> <p>2000 AR: The Government indicated that it was unable to consider ratification of the two Conventions due to a problem of a “technical nature” relating to restrictions placed on the rights of government officials in Indian legislation.</p>
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>YES</p> <p>Under article 19(1)(c), the 1950 Constitution provides that: "All citizens have the right to form associations or unions".</p>
		Policy/ Legislation and/or regulations	<p>• Legislation:</p> <p>2000–2005 ARs: The Trade Unions Act, 1926, allows industrial workers to form trade unions. The Industrial Disputes Act, 1947, recognizes agreements between employers and workers.</p> <p>2002 AR: The Trade Unions Act was amended in 2002 to authorize a trade union to register only if there is a minimum of 100 members or 10 per cent of the workforce, subject to a minimum of 7 workers members, whichever is less, per establishment or industry.</p>
		Basic legal provisions	<p>(i) The 1950 Constitution, article 19(1)(c); (ii) the 2002 Trade Unions Act, 2002; (iii) the Trade Unions Act, 1926; and (iv) the Industrial Disputes Act, 1947.</p>
		Judicial decisions	<p>2000 AR: According to the Government: The highest courts of India and the courts have upheld the constitutionality and reasonableness of the restrictions imposed on freedom of association for government officials.</p>

EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2003 AR: Government authorization/approval is not required to establish an employers' organization, or to conclude collective agreements. Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by all categories of employers. However, there is as yet no central law that enables trade unions a regular recognition, but many state governments have enacted such laws, in the context of the multiplicity of trade unions or for the purpose of collective bargaining.
			For Workers	<p>2006 AR: According to the Government: The workers in India enjoy the rights and protection envisaged under C.87 and C.98. However, government servants are treated as a separate category and they have an exceptionally high degree of job security flowing from article 311 of the Constitution. However, they are not allowed to form trade unions.</p> <p>2003 AR: Government authorization/approval is not required to establish a workers' organization, or to conclude collective agreements. Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons: medical professionals; teachers; agricultural workers; workers engaged in domestic work; workers in export processing zones (EPZs) or enterprises/industries with EPZ status; migrant workers; workers of all ages; and workers in the informal economy. However, persons employed in the armed forces, paramilitary forces, police service and prison, cannot exercise this principle and right (PR). Nonetheless, there is as yet no central law that enables trade unions a regular recognition, but many state governments have enacted such laws, in the context of the multiplicity of trade unions or for the purpose of collective bargaining.</p>
			Special attention to particular situations	NIL
			Information, data collection and dissemination	2003 AR: According to the Government: Data are available on the number and membership of registered employers' and workers' organizations (not disaggregated by sex), and on the numbers of disputes received by, disposed of and or pending before the Industrial Tribunals.
	Monitoring, enforcement and sanctions mechanisms	<p>2006 AR: According to the Government: Government servants have the facility of negotiation machinery under the Joint Consultative Machinery and Administrative Tribunals for the recovery of their grievances.</p> <p>2003-2005 ARs: According to the Government: The following measures have been implemented or are envisaged to promote the PR: (i) legal reform, (ii) inspection/monitoring mechanisms, (iii) penal sanctions, (iv) civil or administrative sanctions and (v) special institutional machinery.</p> <p>2001 AR: According to the Government: A joint team, comprising State Labour Departments, the Central Government's Labour Ministry and representatives of trade unions of the EPZs, has been inspecting the industrial units in EPZs regularly to assess and improve the conditions of workers. A special task force and crash programmes of inspection have been established by the Government to implement the labour laws in the unorganized sectors.</p> <p>2000 AR: According to the Government: The legislation provides for dispute settlements before conciliation officers.</p>		

	Involvement of the social partners	<p>2009 AR: The INTUC mentioned that it had concluded bipartite and tripartite agreements with key stakeholders.</p> <p>2005 AR: According to the Government: A meeting of the tripartite Indian Labour Conference was convened in October 2003.</p> <p>2003 AR: According to the Government: A meeting of the tripartite Standing Labour Committee (SLC) was convened in May 2002.</p>	
	Promotional activities	<p>2009 AR: The PHDCCI indicated that it had strengthened the capacity of its members through newsletters and publications.</p> <p>2008 AR: The CIE indicated that it had been organizing regional tripartite consultations on the Declaration Follow-up since 2003.</p> <p>2003 and 2005 ARs: According to the Government: The following measures have been implemented or are envisaged to promote the PR: (i) capacity building of responsible government officials and (ii) capacity building for employers' and workers' organizations.</p> <p>2000 AR: According to the Government: Efforts are underway to educate and motivate employers and workers to have a collective approach to dispute settlements and differences.</p>	
	Special initiatives/Progress	<p>2003 AR: According to the Government: In the coal industry, subsequently to a strike notice given by many representatives of the CTUOs, the conciliation machinery invited the trade unions for conciliatory talks. A settlement was reached and the strike was averted.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2008 AR: According to the CIE: About 90% of workers are in the informal economy and need to be organized and integrated in the formal economy.</p> <p>2003 AR: According to the AIMO: The establishment of an employers' organization is subject to the Labour Department's scrutiny.</p>

		<p>Workers' organizations</p>	<p>2009 AR: According to the INTUC: The armed forces, the police officials and the teachers were not allowed to participate in trade union activities.</p> <p>The ITUC reiterated most of the challenges it mentioned under the 2008 ARs, and added that: (i) there are moves to exempt export processing zones (EPZs) from the application of labour laws, and some states, such as Andhra Pradesh, have even dissuaded labour departments from conducting inspections in these zones; and (ii) in the Santacruz Electronics Export Processing Zone (SEEPZ) near Mumbai, 90 per cent of the workers are women who are generally young and too frightened to form unions.</p> <p>2008 AR: According to the AITUC: The main difficulty lies in the informal economy and poverty is still the prevailing problem in India.</p> <p>The ITUC reiterated the same challenges mentioned under the 2007 AR. It added that barriers to the organizing of trade unions continued in law and practice, and the government maintained strong restrictions on the right to strike in 2006. The government remains committed to a policy of creating greater flexibility in labour law, which would be detrimental to workers and their unions.</p> <p>2007 AR: According to the ICFTU: (i) the Trade Union Act does not apply in Sikkim where workers do not enjoy trade union rights; (ii) the Delhi State has exempted EPZs from most labour legislation and there is a ban on the formation of trade unions; (iii) employers have a hostile attitude towards trade unions, which discourages workers from organizing.</p> <p>2006 and 2007 ARs: The ICFTU reiterated the challenges it raised in its earlier observations: (i) concerning freedom of association, there are legal and practical barriers to the setting-up of trade unions (informal economy, agricultural sector...) and strong restrictions on the right to strike (especially in Tamil Nadu), which is forbidden to government employees following a High Court Ruling; (ii) concerning the right to collective bargaining, there is no legal obligation for an employer to recognize a union or engage in collective bargaining. In the absence of a statutory right to collective bargaining, employers are frequently reluctant to negotiate, and in particular refuse to negotiate with the unions of the workers' choice. Many restrictions on the exercise of this right are imposed in the public service, the construction and ship breaking industries and Export-Processing Zones (EPZs).</p> <p>2005 AR: According to the ICFTU: Severe restrictions on trade union rights exist in the construction and ship-breaking industries. In the State of Tamil Nadu, a large number of public services are included in the legislative definition of "essential services", hence severely limiting the right to strike.</p> <p>2003 and 2005 ARs: According to the ICFTU: (i) trade unions experience considerable challenges in organizing the vast majority of workers (93%) that operate in the informal economy; (ii) particular problems exist among workers in the public sector, millions of home-based workers (specially women) and among workers in Export-Processing Zones (EPZs); tea plantations and in the State of Sikkim; (iii) trade unions are pressured to enter into 10-year collective agreements, rather than the usual 5 years; (v) and many labour disputes are unresolved.</p> <p>2003 AR: According to the HMS: (i) the right to collective bargaining does not exist, in practice in the informal economy where the relationships between employer and worker is difficult and where only individual bargaining exists; (ii) EPZs are exempted from labour laws, (iii) in practice, workers in EPZs do not enjoy the right to organize and to bargain collectively.</p> <p>2003 AR: According to the AITUC: The main difficulties encountered in the realization of the PR are: (i) lack of public awareness/support; (ii) social and economic circumstances; (iii) legal provisions in some cases; (iv) prevailing employment practices; (v) lack of capacity of employers' and workers' organizations and (vi) lack of social dialogue on this PR. The AITUC further observes that certain States (e.g. Tamil Nadu and Kerala) have enacted legislation to prohibit strikes by government employees.</p>
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	<p>According to the Government</p>	<p>2009 AR: In response to the ITUC's observations, the Government indicated in particular that in India: (i) under the Trade Union Act, 1926, workers are free to form and join unions; (ii) given that many of the central trade unions have affiliation/sympathy for particular political party, some reasonable restrictions have been imposed to civil servants to ensure impartiality and political neutrality; (iii) if an employer refuses to recognize a particular union, a tripartite State Evaluation and Implementation Committee can, through assessment and verification of records, recommend to that employer to recognize the said union or one of the unions; (iv) the amendment of 2001 to the Trade Union Act, 1926, was brought about to reduce multiplicity of trade unions, orderly growth of trade unions and to promote industrial democracy and collective bargaining; (v) the right to strike is dealt with in section 22 of the Industrial Dispute Act, 1947; (vi) explanation and application of the Essential Services Maintenance Act (ESMA) varies from state to state in accordance with the government deliberate flexibility for application based on the needs to maintain basic minimum public services by states and maintain public order; (vii) the Supreme Court of India has further ruled in favour of the provisions of the Central Civil Services (Conduct) Rules, 1964, that prohibit the government servants from resorting to strike; (viii) the Trade Union Act, 1926, has not been extended to the State of Sikkim despite that Union Government has consistently impressed upon the State of Sikkim to make provision for the application of this Act. The State Government of Sikkim has expressed its inability in extending and enforcing the Trade Union Act, 1926, for the time being keeping in view the present level of industrial and economic growth of the State that is still industrially backward and at early stage of industrial development with only a few industrial establishments – which makes it superfluous at this stage to extend and enforce of all the labour laws at a time. However, the Union Government is constant dialogue with the State Government of Sikkim in this regard; (ix) The Government has been making efforts to ensure the enhanced bargaining power to the workers in the informal economy by encouraging the formation of cooperatives, and excellent examples exist such as the Self-Employed Women's Association (SEWA) that participates in all tripartite national level meetings; (x) in certain instances, the ITUC's observations concerning employers hostile to trade union membership, formation or activities may be true. However, as and when such incidents are reported, appropriate action as per the provisions of the criminal and labour laws, is taken; and (xi) concerning EPZs, the Special Economic Zones (SEZs) Act, 2005, provides for the simplification of procedures with objectives to attract investment, generation of economic activities, promotion of exports and creates more employment opportunities. However, it does not preclude the applicability of labour laws in SEZs. Rather, section 49(1), which deals with the power to modify different Acts, specially states that such modifications should not apply to the matters related to trade unions, industrial relations and labour disputes and welfare of labour applicable in any SEZs.</p> <p>2007 AR: In response to the ICFTU's observations, the Government made the following comments: (i) the right to form associations is a fundamental right, and workers can establish or join unions of their own choosing; (ii) a registered trade union can represent its workers and seek recovery of the grievances of the concerned workers; (iii) under the Trade Unions Act, 1926, a trade union can be registered if it has a minimum of seven members. In bigger establishments, the unions are required to have a minimum of 10 or 100 workers whichever is less for becoming eligible for registration. The Government considers this requirement legitimate as it promotes orderly growth of trade unions and reduces their multiplicity; (iv) the provision relating to strike notice is considered essential to enable the Government to intervene and avert a strike in public utility services. This is to ensure that people at large are not affected adversely. Moreover, the requirement of giving a prior strike notice is not necessary in the industrial establishment, which is not a public utility service; (v) even though the Essential Services Maintenance Act (ESMA) enables the State Governments to ban strikes in certain essential industries, a legal mechanism exists for challenging a decision taken under this Act; (vi) government employees who are workers under the Industrial Disputes Act, 1947, do not have any restriction on their right to organize and collective bargaining. Government employees who are not workers under the Industrial Disputes Act are governed by the Central Civil Services Rules, which impose reasonable restrictions on government employees in associating themselves with organizations, which are generally connected with political parties. They, however, enjoy job security under article 309 of the Constitution and also have the facility of negotiation machinery under the Joint Consultative Machinery (JCM). The grievances of these employees can also be redressed through the administrative tribunal; (vii) the Trade Unions Act, 1926 is yet to be extended to the State of Sikkim, an industrially backward State. The State Government is extending the labour laws, which are required from time to time and (viii) all labour laws as enforced by the State Governments are equally applicable to Special Economic Zones (SEZs) and Export Processing Zones (EPZs).</p>
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TECHNICAL COOPERATION	Request	<p>2009 AR: According to the INTUC: ILO's technical cooperation is requested to promote the PR in the country.</p> <p>2008 AR: According to the CIE: ILO technical cooperation is required for the integration of workers from the informal economy to the organized economy.</p> <p>The AITUC requested ILO assistance to fight against poverty.</p> <p>The BMS stated that a country assessment was needed on the Declaration Follow-up.</p> <p>2007 AR: According to the AITUC: ILO technical cooperation is required in cooperation with the Government with a view to strengthen the capacity building of the government and the employers' and workers' organizations in promoting and realizing the PR, rather than supporting the NGOs.</p> <p>2005 AR: According to the Government: There is a need for ILO technical cooperation to facilitate the realization of this PR in India, in particular in the following areas in order of priority: (i) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR; sharing of experiences across countries/regions; capacity building of responsible government institutions; training of other officials (police, judiciary, social workers, teachers); strengthening tripartite social dialogue; training of officials dealing with labour law enforcement/administrative; (ii) strengthening capacity of workers' and employers' organizations; legal reform (labour law and other relevant legislation); awareness-raising/advocacy activities and legal literacy and (iii) strengthening data collection and capacity for statistical analysis.</p> <p>2000 AR: In response to the ICFTU's observations, the Government made the following comments: (i) agricultural and contractual workers have the right to organize and bargain collectively in India; (ii) however, there are major obstacles as to their effective unionization due to the fact that most operate in the informal economy; (iii) the Labour Laws neither make any distinction between Export-Processing Zones (EPZs) and other areas nor between workers in these zones and other sectors.</p>
	Offer	NIL

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of India (and three other governments) had indicated the current impossibility to ratify C. 87 and C.98 without further justification. They encouraged the Government of India to (and some other governments) to initiate the necessary labour law reforms to remove the obstacles to the ratification of these two Conventions. They also noted that restrictions on the right to organize of certain categories of workers in India (and some other countries), such as workers in the public service and workers in the informal economy, were not compatible with the realization of this principle and right (Cf. Paragraphs 29, 32 and 38 of the 2003 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed India among the four countries in which 52 per cent of the total labour force of ILO member States live and which have not yet ratified C.87 and C.98. This leaves many millions of workers and employers without the protection offered by these instruments in international law, even if the governments concerned may consider that their law and practice are sufficient. Furthermore, the IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize for workers in the public service (Cf. Paragraphs 32 and 37 of the 2003 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The IDEAs listed India among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (Cf. Paragraph 13 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2003 AR: The IDEAs were encouraged to see the Government of India pointing out the needs in this country to strengthen the capacity building of workers' and employers' organizations and that it turned to the ILO for help. In light of requests by India for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, they called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field (Cf. Paragraphs 73 and 74 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: IRAN, ISLAMIC REPUBLIC OF

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , since the start of the Annual Review (AR) in 2000.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of Iran's Confederation of Employers' Associations (ICEA), the Iran Confederation of Islamic Labour Conference (ICILC) and the Confederation of Iranian Employers (CIE) through communication of government reports and tripartite meetings on reporting issues.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by the CIE. 2008 AR: Observations by the ICEA. 2007 AR: Observations by the ICEA.	
	Workers' organizations	2009 AR: Observations by the ICILC. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the ICILC. Observations by the ITUC. 2007 AR: Observations by the ICILC. Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the ICFTU. 2000-2005 ARs: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	The Islamic Republic of Iran has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	Yes, since 2001, for C. 87 and C. 98. 2009 AR: According to the Government: A comprehensive tripartite survey has been conducted at national level concerning ratification of C.87 and C.98. Upon completion, this survey is hoped to facilitate the ratification process. ILO technical assistance is requested in this ratification process. The CIE mentioned its support to the ratification of C.87 and C.98 by the Islamic Republic of Iran. The ICILC stated that it had a neutral position concerning this issue. 2008 AR: The Government reiterated that the feasibility study on the possibility of ratification of C. 87 and C. 98 was still under way. The ICEA supported the ratification of C.87 and C.98. The ICILC reiterated its support for ratification of C.87 and C.98 by the Islamic Republic of Iran. 2007 AR: The Government stated that the feasibility study on the possibility of ratification of C. 87 and C. 98 was still under way. The ICILC expressed its support for ratification of C.87 and C.98 by the Islamic Republic of Iran 2006 AR: According to the Government: The Government and the social partners request ILO technical assistance in the ratification process. A feasibility study on the possibility of ratification of C. 87 and C. 98 is being carried out. Workers’ organizations support the ratification of these two Conventions, but employers’ organizations do not. 2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (2002): The Government intended to ratify C.87 and C.98.	
Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	YES The 1989 Constitution (article 26) provides for freedom of assembly and association.		
	Policy/legislation and/or regulations	Legislation: 2008 AR: An ILO mission provided technical assistance to the Government on labour law reform, labour administration and social dialogue in relation the principle and right (PR) and other topics. 2005 AR: The 1990 Labour Code and its amendments relate to the PR. Legal reform is in process since 2003 in cooperation with the ILO.		
	Basic legal provisions	(i) The 1989 Constitution (article 26); (ii) the Labour Code (sections 139-146); and (iii) the Agreement of 24 December 2001.		
	Judicial decisions	NIL		
Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2003-2005 ARs: According to the Government: Prior government authorization is necessary to operate employers’ organizations and to conclude collective agreements. All categories of employers can establish their organizations.	
		For Workers	2003-2005 ARs: According to the Government: Prior government authorization is necessary to operate workers’ organizations and to conclude collective agreements. The PR can be exercised by all categories of workers, except military and the police, migrant workers, workers in the public service, workers in the informal economy and establishments with less than ten employees.	

			Special attention to particular situations	2003-2004 ARs: According to the Government: Religious minorities and certain specific industry/sectors. Special attention to women is envisaged.
			Information/ Data collection and dissemination	2009 AR: According to the Government: A feasibility study on ratification of C.87 and C.98 is being carried out.
		At international level	According to the Government: There are no particular restrictions for the international affiliation of employers' and workers' organizations.	
	Monitoring, enforcement and sanctions mechanisms	2009 AR: According to the Government: The number of labour inspectors has been almost doubled to ensure that workers and employers freely enjoy the right to organize. As a result, the number of workers' and employers' organizations has considerably increased. 2002- 2003 ARs: According to the Government: When the PR has not been respected, section 178 of the Labour Code provides for penalties ranging from fines to imprisonment. The PR is enforced through training and supervision, law, collective agreements, free dispute settlement procedures and tripartite consultations at all levels. 2000-2002 ARs: According to the Government: In instances where the PR is not respected, the Minister of Labour shall only provide guidance to members with grievances and ensure that the matter is dealt with in accordance with the appropriate legal procedures. 2000-2002 ARs: According to the Government: Employers' and workers' organizations can submit to the Ministry of Labour and Social Affairs, observations and suggestions on legal issues and the implementation of regulations. Their suggestions and observations, after being thoroughly examined by the relevant committee are submitted to the Islamic Consultative Assembly of the Council of Ministers.		
	Involvement of the social partners	2009 AR: According to the Government: A comprehensive tripartite survey has been conducted at national level concerning ratification of C.87 and C.98. 2005 AR: According to the Government: Employers' and workers' organizations have been involved in the task force to review national labour laws and harmonize them with the provisions of ILO fundamental labour Conventions.		
	Promotional activities	2009 AR: The ICILC indicated that it had encouraged the organization of tripartite meetings. 2008 AR: According to the Government: The Ministry of Labour and Social Affairs and the employer's and workers' organizations cooperated with an ILO mission on labour law reform, labour administration and social dialogue in relation the PR and other topics. Moreover, the Government has incorporated the creation of independent and strong employers' and workers' organizations as a priority in its national strategy for development. 2007 AR: According to the Government: Some amendments are being made to the Labour Code to promote employers' and workers' organizations' rights and their multiplication through free and democratic ways. Moreover, the Government is creating strengthened, flexible and responsible labour institutions as well as raising public awareness for the promotion of the PR in the country. 2001-2002 ARs: According to the Government: Government officials and social partners have been trained on labour standards.		
	Special initiatives/Progress	2009 AR: According to the Government: The number of labour inspectors has been almost doubled to ensure that workers and employers' freely enjoy the right to organize. As a result, the number of workers' and employers' organizations has considerably increased. 2008 AR: According to the ICILC: several meetings were held with the Government on the amendments of Chapter VI of the Labour Code concerning the establishment of labour councils and the right to strike. These amendments need to comply with the provisions of C.87 and 98. 2005 AR: According to the Government: The decision to allow the free establishment of associations.		

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	NIL.
		Workers' organizations	<p>2009 AR: The ITUC reiterated the same challenges that it had raised under the 2008 AR concerning the Islamic Republic of Iran, in particular as regards: (i) the non-existence of independent trade unions; (ii) the Government's control over trade unions that are essentially a channel for government control over workers; (iii) there is no right to strike, and a 1993 law prohibits public sector stoppages; (iv) labour legislation does not apply to export processing zones (EPZs); (v) about 90 per cent of workers (about 700,000) are operating in small workshops and are not protected by existing labour legislation; and (vi) obstacles to organizing include the presence of security and intelligence forces in workplaces and the increasing trend toward temporary contracts.</p> <p>2008 AR: According to the ICILC: the Government still plays an active role in the formation of the Labour Councils, and prior authorization is needed. The ICILC added that thanks to discussions being currently held on Chapter VI of the Labour Code, there would certainly be an improvement on that issue in a near future.</p> <p>The ITUC reiterated the same challenges noted in the 2000-2007 ARs and added that unions faced ruthless repression during 2007, particularly the union at the Tehran and Suburbs Bus Company. It added that national legislation in the country deprived some categories of workers from the exercise of the PR. The Government issued a three-year interim legislation that deprives temporary workers in enterprises of less than ten workers (representing about 90 per cent of the workforce) from the protection of the law including the right to organize.</p> <p>2000-2007 ARs: According to the ICFTU: (i) There are still no independent trade unions, and only one workers' organization is authorized by the Government; (ii) since January 2003, most workers are unprotected by the Labour Law, including the right to organize; (iii) the Labour Legislation does not apply in Export-Processing Zones (EPZs); (iv) the 1990 Labour Code focuses on Islamic societies and associations and prohibits independent trade organisations, (v) an amendment to the Labour Code in 2003 allows workers to form and join so called "trade unions", without prior authorization, but the Ministry of Labour determines their rights and responsibilities; (vi) obstacles to organizing include the presence of security and intelligence forces in workplaces, and the increasing trend towards temporary contracts; (vii) trade unions' rights are denied, although there has been more tolerance for workers' organizations; (viii) despite the ban on strikes, there have been numerous protests and work stoppages in recent years and (ix) all collective agreements have to be submitted to the Ministry of Labour for examination and approval.</p>

	According to the Government	<p>2009 AR: In response to the ITUC's observations, the Government expressed its willingness to receive a more cooperative approach from the ITUC in addressing the alleged challenges and finding solutions.</p> <p>2007 AR: In response to the ITUC's observations, the Government indicated that some amendments were being made to the Labour Code to promote employers' and workers' organizations' rights and their multiplication through free and democratic means, irrespective of the latter's affiliation to the Workers' House as a political party.</p> <p>2001-2005 ARs: According to the Government: the main difficulties encountered in realizing the PR in Iran are as follows: (i) lack of public awareness and/or legal support; (ii) lack of information and data; (iii) social and economic circumstances; (iv) political situation; (v) legal provisions; (vi) prevailing employment practices; (vii) lack of capacity of responsible government institutions; (viii) lack of employers' organizations; (ix) lack of capacity of workers' organizations and (x) lack of social dialogue on the PR.</p> <p>2005 AR: In response to the ICFTU's comments, the Government made the following observations: (i) Chapter VI [on workers' and employers' organizations] of the current Labour Code is being revised and amended to ensure compliance of national legislation with ILO Conventions No. 87 and No. 98; (ii) serious and meaningful national tripartite consultations are being held by the Government with ILO technical assistance in this respect; and (iii) the Ministry of Labour and Social Affairs will continue to cooperate fully and directly with the ILO to strengthen the PR.</p>
TECHNICAL COOPERATION	Request	<p>2009 AR: The Government requested ILO technical cooperation to facilitate the ratification process of C.87 and C.98 through awareness raising, data collection and dissemination, policy advice, legal reform, capacity building for labour administration, employers' and workers' institutions and strengthening social dialogue. This assistance should be integrated in the decent work country programme that would need ILO technical review and support.</p> <p>According to the ICILC: An ILO survey was needed to assess the situation of the PR in the country.</p> <p>2008 AR: The Government volunteered for the preparation of a case study on the realization of the Fundamental Principles and Rights at Work in the country, followed by a national tripartite workshop to validate this survey and draw a national plan of action to realize the Declaration.</p> <p>The ICEA requested ILO technical cooperation regarding training programmes on freedom of association and collective bargaining. According to the ICILC: ILO legal advice is needed to ensure compliance of Chapter VI of the Labour Code with the provisions of C.87 and 98 and ensure that freedom of association for employers' organizations and labour councils are respected.</p> <p>2007 AR: The Government reiterated its request for ILO technical cooperation in the areas mentioned under the 2005 AR, and with a priority given to amendments made to the labour laws and capacity building of employers' and workers' organizations. The ICEA and the ICILC requested ILO technical cooperation for training on freedom of association and collective bargaining techniques and the promotion of the fundamental principles and rights at work.</p> <p>2005 AR: According to the Government: Needs for technical cooperation to facilitate the realization of the PR in Iran exist in the following areas, in order of priority: (1) assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the PR, strengthening data collection and capacity for statistical analysis; strengthening social dialogue; sharing of experiences across countries/regions; capacity building of responsible government institutions; strengthening capacity of employers' and workers' organizations; awareness-raising, legal literacy and advocacy; strengthening tripartite social dialogue; and (2) legal reform.</p>
	Offer	ILO advisory services on freedom of association and collective bargaining issues.

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) encouraged the Government of the Islamic Republic of Iran (and some other governments) to complete the legal review process to remove the obstacles to ratification of C. 87 and C.98. They also noted that restrictions on the right to organise of certain categories of workers in the Islamic Republic of Iran (and some other countries), such as workers in the public service and workers in the informal economy, were not compatible with the realization of this principle and right (Cf. Paragraphs 32 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2005 AR: The IDEAs stated that the Office was following up on freedom of association and collective bargaining issues in Iran. In this respect, they noted with interest the information provided by the Islamic Republic of Iran under the Declaration follow-up (Cf. Paragraph 37 of the 2003 Annual Review Introduction – ILO: GB.292/4).</p> <p>2003 AR: In light of requests by the Islamic Republic of Iran for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, the IDEAs called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field. (Cf. Paragraph 74 of the 2003 Annual Review Introduction – ILO: GB.298/3).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: IRAQ

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , for the 2001, 2006 and 2007 Annual Reviews (ARs).
	Involvement of Employers' and Workers' organizations in the reporting process	YES , According to the Government: Involvement of the Iraq Federation of Industries (IFI), the Iraq Federation of Trade Unions (IFTU) and the General Federation of Iraqi Workers (GFIW) through communication of Government's report and consultation.
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2007 AR: Observations by the IFI. 2006 AR: Observations by the IFI.
	Workers' organizations	2009 AR: Observations by the GFIW. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the ITUC. 2007 AR: Observations by the IFTU. Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the IFTU. Observations by the ICFTU. 2000 AR: Observations by the ICFTU.

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Iraq ratified in 1962 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98) . However, it has not yet ratified the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87) (C.87) .	
		Ratification intention	<p>YES, since 2001, for C.87.</p> <p>2009 AR: The Government stated that it had not ratified C.87 because it conflicted with the labour law, which did not allow more than one trade union. However, recent changes in the legislation gave the Government permission to establish trade unions.</p> <p>The GFIW stated that it was in agreement with the Government's views regarding C.87. It also observed that the draft of the new labour Code could help solve current issues and be beneficial to tripartism in the country.</p> <p>2008 AR: The Government reiterated its support to the ratification of C. 87 and indicated that it has already been submitted to Parliament for endorsement.</p> <p>2007 AR: The Government indicated that ratification of C.87 would be submitted very soon to Parliament. The IFI and the IFTU support the ratification of C.87 by the Government.</p> <p>2006 AR: According to the Government: Ratification of C.87 will be done after the adoption of the new Labour Code, which integrates the provisions of this Convention.</p> <p>2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001): The Government intended to ratify C. 87.</p>	
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>2007 AR: According to the Government: Article 22 of the national Constitution, 2006, recognizes the principle of freedom of association.</p> <p>2006 AR: According to the Government: A new Constitution will be submitted to referendum at the end of 2005. The draft text recognizes the principle and right (PR).</p>	
		Policy/Legislation and/or Regulations	<p>Legislation:</p> <p>2007 AR: According to the Government: The draft of the Labour Code, which is currently under review with ILO technical cooperation, recognizes the PR.</p> <p>2006 AR: According to the Government: A revised Labour Code drafted in cooperation with the social partners and the ILO has been submitted to Parliament for review and adoption. This draft text recognizes the PR.</p>	
		Basic legal provisions	(i) Article 22 of the national Constitution, 2006; (ii) Act No.52 on Trade Union Organizations (1989); (iii) Act No.43 on the Federation of Chambers of Commerce (1989); (iv) Act No.44 on the Union of Iraqi Industries (1989); (v) section 6, 116, 128, 147 of Act No. 71 of 1989; and (vi) sections 130 to 196 of the Labour Code.	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2001 AR: According to the Government: Freedom of association and the right to establish employers' organizations are ensured by law.
			For Workers	<p>2006 AR: According to the IFTU: The Government does not interfere in its activities and respects freedom of association.</p> <p>2001 AR: According to the Government: Freedom of association and the right to establish workers' organizations are ensured by law.</p>

			Special attention to particular situations	NIL
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	Information/ Data collection and dissemination	2001 AR: According to the Government: There is a lack of information and data concerning the PR.
		At international level	According to the Government: There are no particular restrictions for the international affiliation of employers' or workers' organizations.	
	Monitoring, enforcement and sanctions mechanisms	2008 AR: According to the Government: only one trade union existed before 2003 but since, a large number of other trade unions have been created. The Government is currently preparing facilities for trade unions elections. 2001 AR: According to the Government: Labour legislation is implemented by labour inspection committees (section 16 of the Labour Code).		
	Involvement of the social partners	2007 AR: The IFI stated that it had been elected to the board of the Arab Labour Organization (ALO). 2001 AR: According to the Government: Section 116 (1) of the Labour Code provides that "Workers' and employers' organizations are represented on labour inspection committees entrusted with the proper implementation of the labour legislation".		
	Promotional activities	2009 AR: According to the Government: A draft of a new Labour Code that incorporates the principles of C.87 is being prepared, and a Committee for the Implementation of International Labour Standards has been established. According to the GFIW: The workers were involved in the ratification process of C.87, and the Government has promoted workers' activities. This reflects the good relationship between the Government and the workers. 2008 AR: The Government indicated that social dialogue is well functioning and as an example, the Government submitted a copy of a specific Committee within the Ministry of Labour and Social Affairs where governmental, employer and worker representatives deal with ILO issues and adopt recommendations. 2007 AR: According to the Government: Tripartite committees have been set up to ensure the realization of the PR.		
	Special initiatives/Progress	2006 AR: According to the Government: A draft Constitution and a draft Labour Code have been prepared that recognize the PR. The Government no longer interferes in employers' and workers' organizations activities.		

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2007 AR: According to the IFI: The social and economic situation (economic crisis with more than 50% unemployment rate and insecurity) makes it difficult to exercise the PR in Iraq.</p> <p>2006 AR: The IFI mentioned that it wished to be consulted in the Government's decisions concerning economic and social issues.</p>
		Workers' organizations	<p>2009 AR: According to the GFIW: The war situation in the country has reduced the trade union activism. The ITUC reiterated the same challenges mentioned in the 2008 AR concerning Iraq, in particular with respect to: (i) the new draft Labour Code prepared with the assistance of the ILO and made public in 2007. This draft contains shortcomings which the ILO has asked to be rectified (remove the prohibition against companies in the oil sector cooperating with trade unions; give stronger protection against anti-union discrimination; remove the stipulation that at least 50 per cent of workers at a single workplace must agree for the union to represent it, before it is legal; clarify whether the Labour Code will include Law 150 of 1987, which prohibits public sector workers organizing or going on strike); (ii) in August 2008, after pressure from Public Services International, the Government said it would consider repealing laws that ban public service unions; (iii) former laws (i.e., Law 150 of 1987) are still in force and contain many barriers to trade union rights, including the right to organize and to go on strike including ; (iv) trade union funds are full controlled by the authorities; and (v) in practice, most workers are banned from union membership given the predominance of the public sector in the country, only one national centre of trade unions (the General Federation of Iraqi Workers – GFIW) is officially recognized, and threats exist against workers trying to start a strike, especially in state-owned companies where some employers have referred to provisions in former laws.</p> <p>2008 AR: The ITUC reiterated the same challenges mentioned in the 2007 AR and added that trade unions were still fully controlled by the authorities. Moreover, a member of the Executive Bureau of the General Federation of Iraqi Workers (GFIW), Alaa Issa Khalaf, was shot dead on 25 January 2006, when leaving home for work by several unidentified men and on 27 April 2006, as the leader of the health workers' union was leaving his office, Thabet Hussein Ali was abducted by a group of terrorists. His bullet-ridden corpse was discovered the following day and he was carrying signs of severe torture, including wounds caused by an electric drill. Furthermore, on 18 August 2006, Tariq Mahdi, a leader of the Union of Health Service Employees was murdered by a militia in Mahmoodya. On 27 July 2006, a demonstration by workers at a cement factory in Tasloja (Sulaimaniya), in support of a wage increase, was violently suppressed by the company's security guards. 13 strikers were injured. The guards were subsequently arrested by the police.</p> <p>It added that the Supreme National Commission for De-Baathification (SNCD) sent the two following notifications to the Iraq Federation of Trade Unions (IFTU): (i) a letter concerning the rules to be followed in the trade union elections based on Decree 3 of the Government Council; (ii) a list of five people who were "not permitted to hold any leadership post in any federation, company, association or trade union in Iraq".</p> <p>Finally, it underscored that the laws were outdated and/or need to comply with international labour standards. The Draft Labour Code has not yet been adopted. Therefore, the employment laws dating back to the era of Saddam Hussein remain in force, such as the ban on workers in the public sector from organizing or going on strike. Indeed, Law No. 150 changed the status of workers in state-owned enterprises to consider them as civil servants, and therefore depriving them from the right to organize.</p> <p>2007 AR: According to IFTU: The political and social situations in Iraq make it difficult to exercise the PR.</p>

			<p>The ICFTU raised the following challenges: (i) the new labour code drafted with input from the ILO has still not been implemented; (ii) Decree 875 gave the Government total control over the existing unions' finances, (iii) the fact that only one national trade union has been granted official recognition gives the opportunity to employers to refuse to acknowledge other unions in the workplace unless they join the IFTU; (iv) the Federation of Workers' Councils and Unions in Iraq (FWCUI) claims 300,000 members across Iraq, but has been denied recognition as a representative workers' organization, (v) many employers have reportedly used the existence of the old laws to threaten any workers seeking to take strike action in public enterprises.</p> <p>2006 AR: The IFTU mentioned that it wished to be consulted in the privatization process. According to the ICFTU: (i) there were many encouraging signs of trade union activities among workers, but full freedom of association is not yet restored given that several national-level union other than the IFTU (for example the Federation of Workers' Councils and Unions in Iraq (FWCUI) are not officially recognized; (iii) given that old laws are still in force, there are many obstacles to trade union's rights, including the ban on organizing and the right to strike in the public sector only one trade union organization was given official recognition; (ii) strikes are banned in the public sector; (iii) workers trying to take strikes action are being threatened.</p> <p>2005 AR: According to the ICFTU: (i) there are no offices to register trade unions and employers refuse to recognize unions on the ground that they are not registered.</p> <p>2000-2002 ARs: According to the ICFTU: (i) there is a single trade union structure through the GFTU that is controlled by the ruling Ba'ath Party; (ii) there are no unions for public sector workers and workers in state enterprises; (iii) severe restrictions exist on the right to strike, including the threat of imprisonment.</p>
	<p>According to the Government</p>	<p>2009 AR: According to the Government: The existing Labour Code was against C.87 and the ILO's experts were assisting the Government in drafting a new Labour Code. Furthermore, the Government stated that there was not enough workers' education facilities in the country.</p> <p>2008 AR: The Government indicated that a serious problem of insecurity still prevailed in the country, mainly due to terrorism.</p> <p>2006 AR: According to the Government: The main difficulty encountered in realizing the PR in Iraq is related to the political and security situation.</p>	

TECHNICAL COOPERATION	Request	<p>2009 AR: According to the Government: The ILO's cooperation is needed in the drafting of the labour laws and the setting up of the tripartite mechanism for social dialogue. The GFIW stated that the ILO's support was needed in the provision of the training courses on the relevance of C.87.</p> <p>2008 AR: According to the Government: Technical assistance is needed for capacity building on freedom of association for workers' and employers' association and to the Ministry of Labour and Social Affairs. It added that ILO technical cooperation would increase the leadership quality of workers' and employers' representative on freedom of association and other international labour standards. Other needs were put forward by the Government, namely labour inspections and vocational trainings.</p> <p>2007 AR: According to the Government: ILO technical cooperation is necessary to strengthen capacity building of employers' and workers' organizations, labour inspection and social dialogue. According to the IFI: There is an urgent need for ILO technical cooperation to strengthen the capacity of employers' organizations on the PR. According to the IFTU: ILO should support trade unions' capacity building on the PR.</p> <p>2006 AR: According to the Government: Given the negative effects of the war on the activity of the Ministry of Labour and Social Affairs and the employers' and workers' organizations, the Government needs ILO technical cooperation project to facilitate the realization of the PR in Iraq in the following areas, in order of priority: (1) capacity building of responsible government institutions and employers' and workers' organizations; (2) training of government officials and employers' and workers' organizations on the PR, in particular social dialogue and collective bargaining techniques; and (3) training of other officials (judiciary, social workers, teachers). The IFI and the ICFTU requested special ILO assistance in capacity building.</p>
	Offer	NIL
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) encouraged the Government of Iraq (and few other governments) to complete the legal review process to remove the obstacles to ratification of C.87. They also listed Iraq among the countries where some unions are subject to government's interference or influence. In this regards they recalled the following: "the right to official recognition is an essential aspect of the right to organize as it allows employers' and workers' organizations to be in a position to play their roles efficiently. Furthermore, any government intervention in employers' and workers' organizations' internal affairs (right to establish and join organizations of their own choosing, without distinction whatsoever and without previous authorization, right to draw up internal constitutions and rules, right to elect their representatives in full freedom, etc.) constitutes interference in the functioning of these organizations, which is a denial of the principle and right." (Cf. Paragraphs 32 and 36 of the 2007 AR Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed Iraq among the countries that have been indicating their intention to ratify C.87 and C.98 for several years, with no indication that progress had been made (Cf. Paragraph 73 and 74 of the 2003 Annual Review Introduction – ILO: GB.286/4). (Cf. Paragraph 33 of the 2007 AR Introduction – ILO: GB.298/3).</p>	



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: JORDAN

FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, but "no change" reports for the 2002 and 2004 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Jordan Chamber of Commerce (JCC), the Jordan Chamber of Industry (JCI) and the General Federation of Jordanian Trade Unions (GFJTU) by means of consultations and communication of Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2006 AR: Observations by the JCC. Observations by the JCI.	
	Workers' organizations	2009 AR: Observations by the GFJTU. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the GFJTU. Observations by the ITUC. 2007 AR: Observations by the GFJTU. Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the GFJTU. Observations by the ICFTU. 2005 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Jordan ratified in 1968 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>YES, since 2002, for C.87.</p> <p>2009 AR: According to the Government: A tripartite committee is in the process of drafting the Labour Law so as to ease the ratification process for C.87. The GFJTU supported the ratification of C.87 by Jordan and indicated that it was sending a yearly letter to the King of Jordan to that effect.</p> <p>2008 AR: According to the Government: A joint committee, composed of the social partners, has been studying, for more than two years, the possibility of developing the Labour Code and making the required amendments thereto, especially as regards collective labour relations and the right to organize for both workers and employers. Amendment proposals have been referred to the Council of Ministers for approval. This process illustrates government efforts to bring national labour laws closer to the requirements of Convention No. 87 and pave the way for the ratification of this instrument. The committee will continue its consideration of further amendments to the subjects concerned.</p> <p>All these steps are taken in the framework of the efforts to bring the national legislation closer to the requirements of Convention No. 87 in order to pave the way for its ratification. Given the fact that tripartite consultation affects the interests and rights of the social partners, Jordan is aware of the importance of such a consultation in this field.</p> <p>The GFJTU expressed its support to the ratification of C.87.</p> <p>2006 AR: According to the Government: Ratification of C.87 is still under consideration.</p> <p>2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (2002): The Government intended to ratify C.87.</p>
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>YES</p> <p>The 2002 Constitution (article XXIII, paragraph 2(f)) provides for the protection of labour by the State, and for enacting legislation based on the principle of "freedom of association within the law".</p>
		Policy/ Legislation and/or Regulations	<ul style="list-style-type: none"> • Legislation: <p>2007 AR: According to the Government: It has established a tripartite committee to consider the amendments required on the Labour Code in compliance with international standards. The Ministry of Labour expects that the proceedings of this committee will be completed and that a final version of the draft amendments to the Labour Code will be submitted to the Parliament by the end of 2006. The amendments under discussion include several subjects, such as the right to organize and bargain collectively, the means of settlement of collective disputes and other questions concerning individual and collective relations. Moreover, some emerging gaps in the law will be addressed to cope with new developments in the national labour market.</p> <p>2000 AR: The 1996 Labour Code relates to the principle and right (PR).</p> <ul style="list-style-type: none"> • Regulations: <p>Decree No. 2 of 1997 relates to the PR.</p>
		Basic legal provisions	(i) The 2002 Constitution (articles XXIII, paragraph 2(f); (ii) the Labour Code No. 98 of 1996; and (iii) Decree No. 2 of 1997.
		Judicial decisions	NIL

	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2003 AR: Government authorization/approval is required for the registration of an employers' organization. The PR can be exercised at enterprise, sector/industry and national levels. Only freedom of association can be exercised at international level by all categories of employers.
		At national level (enterprise, sector/industry, national)	For Workers	2003-2005 ARs: Government's authorization/approval is required for the registration of a workers' organization. The PR can be exercised at enterprise, sector/industry and national levels. Only freedom of association can be exercised at international level by the following categories of persons: medical professionals; workers in export processing zones (EPZs) or enterprises/industries with EPZ's status; workers who have reached the age of 18 years; workers in the informal economy; teaching workers in the private sector. However, workers in the public service cannot exercise the PR. The same applies to agricultural workers and domestic workers, since they are not subject to the provisions of the LL. Migrant workers cannot exercise the right to freedom of association. 2000 AR: According to the Government: The Registrar of Trade Unions is required to take a decision concerning the registration of an organization within 30 days of the submission of the application. Once approved, he proceeds to register the organization, and to publish the registration in the <i>Official Gazette</i> . If rejected, founders of the proposed organization may appeal against his decision before the Supreme Court of Justice within 30 days of their being notified of the decision.
			Special attention to particular situations	NIL
			Information/Data collection and dissemination	2004 AR: According to the Government: There are 43 employers' organizations and 17 trade unions.
			At international level	NIL
	Monitoring, enforcement and sanctions mechanisms	<p>2008 AR: The GFJTU indicated that a Tripartite Committee was established in June 2007.</p> <p>2006 AR: According to the Government: The 2004 Labour Inspection Report recorded the following activities and measures: (i) advice and guidance to associations: 6,825 cases; (ii) warning to establishments: 918 cases; contraventions to Labour Code: 24,567 cases.</p> <p>2003-2005 ARs: According to the Government: The following measures have been implemented to enforce and realize the PR: (i) legal reform Labour Code and other relevant legislation; (ii) inspection/monitoring; mechanisms; (iii) capacity building of responsible government officials; (iv) and capacity building for employers' and workers' organizations.</p> <p>2002 AR: According to the Government: The 2001 labour report recorded the following activities and measures: (i) advice and guidance (15,042 cases); (ii) warning (2,198 cases); (iii) violations of the Labour Code referred to the competent courts (4,269 cases).</p>		

	Involvement of the social partners	<p>2009 AR: According to the Government: A tripartite committee is in the process of drafting the Labour Law so as to ease the ratification process for C.87. Moreover, tripartite activities are being developed through the ILO Project on Social Dialogue.</p> <p>2006 AR: According to the Government: Employers' and workers' organizations are participating in the National Commission labour laws review. They also take part in the social dialogue project carried out by the Government in cooperation with the ILO.</p> <p>2005 AR: According to the Government: Consultations and dialogue have been held with all trade unions.</p> <p>2003-2004 ARs: According to the Government: Tripartite discussions of issues have been implemented.</p>	
	Promotional activities	<p>2009 AR: The Government reported that the Ministry of Labour had been organizing workshops to strengthen the social partners' capacities on the PR in cooperation with the ILO Project on Social Dialogue.</p> <p>The GFJTU indicated that a letter was sent every May 1st to the King of Jordan asking for the ratification of C.87.</p> <p>2008 AR: According to the Government: The Ministry contributes to the improvement of the capacity of the social partners with regard to Convention No. 87 through the social dialogue project, implemented with the ILO, which undertakes many activities, including courses and seminars for the social partners, to familiarize them with the Convention.</p> <p>The GFJTU indicated that several workshops have been organized, namely the social dialogue project (2001-2006) in collaboration with the ILO, continuous campaigns through the media to put pressure on the Government to ratify C.87 and awareness raising activities to explain the provisions of C.87.</p> <p>2003-2004 ARs: According to Government: Awareness raising/advocacy activities are envisaged.</p>	
	Special initiatives/ Progress	<p>2008 AR: According to the GFJTU: Migrant workers have obtained the right to organize in Jordan.</p> <p>2006 AR: According to the Government: A social dialogue project is being carried out in cooperation with the ILO and social partners include capacity building of government institutions and employers' and workers' organizations.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	NIL

		<p>Workers' organizations</p>	<p>2009 AR: The GFJTU indicated that the workers in the public sector were not allowed to participate in trade union activities.</p> <p>The ITUC reiterated most of the challenges it had raised under the previous AR (2008) concerning Jordan, and further mentioned that: (i) despite the right to form trade unions, there are many obstacles to freedom of association as trade unions must obtain approval by the Ministry of Labour in order to become officially registered, and registration is directly linked to 17 professions and sectors in which trade unions already exist, making trade union pluralism effectively impossible; (ii) new law threatens freedom of association as it would extend to trade unions restriction concerning freedom of association for NGOs (i.e., prohibition for an NGO to become a member of a partner of a foreign NGO and limits on funding); (iii) in export processing zones (EPZs) and qualified industrial zones (QIZs) that are subject to national laws, workers, 70 per cent of whom are foreign and classed as “non-citizens”, are not legally allowed to form or participate in unions. As a result, many suffer from very low pay and terrible working conditions; and (iv) foreign workers are barred from trade union membership, despite union’s pressure on the Government to amend the labour law and to allow them to join union, without voting right. In this regard, in 2007, the ILO “expressed hope” that the Labour Code would be amended to protect migrant workers.</p> <p>2008 AR: The GFJTU indicated that public workers are neither allowed to organize nor to participate in collective bargaining.</p> <p>The ITUC reiterated the challenges mentioned in the 2007 AR and added that: (i) Civil servants, domestic staff, gardeners, cooks and agricultural workers are not covered; (ii) many of the workers in the EPZs are migrant workers and therefore do not have the right to join trade unions. In some zones, migrant make up 58 per cent of the workers.</p> <p>2007 AR: The GFJTU hoped that labour law review would take place with a view to allow improved trade unions’ registration.</p> <p>According to the ICFTU: (i) the single trade union system is still in place; (ii) migrant workers still have no trade union rights; (iii) there is only one trade union federation; (iv) strikes are not legal but in practice, they are tolerated.</p> <p>2006 AR: The GFJTU raised the following challenges: (i) Non-Jordanians are not allowed to join trade unions; (ii) the minimum number of members required for employers to set up their own organizations is 30, whereas workers have to number over 50 to be able to establish their own organizations.</p> <p>2000-2006 ARs: The ICFTU raised the following challenges to freedom of association in Jordan: (i) the registration system through the Ministry of Labour and with one registered trade union per profession or sectors makes effective trade union pluralism impossible; (ii) all trade unions are affiliated to the GFJTU, and the Government subsidizes and audits the GFJTU’s salaries and activities and monitors the unions’ elections; (iii) the Labour Code does not confer protection against anti-union discrimination; (iv) there are restrictions on the right to strike even though strikes are tolerated in practice; (v) public sector workers do not enjoy the rights to organize and the right to strike; (vi) civil servants, agricultural workers, domestic servants, gardeners and cooks are not covered by the Labour Code; (vii) over one million foreign workers are barred from trade union membership and the right to strike; even though some unions do not seek to represent their interests, there are not able to recruit they as members.</p>
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	<p>According to the Government</p>	<p>2009 AR: According to the Government: there is a lack of capacity of government officials and employers' and workers' representatives concerning the PR.</p> <p>2008 AR: The Government indicated that the need to enhance the capacity of the social partners, for Jordan is currently implementing a project aimed at improving the capacity of the employees of the Ministry of Labour. In addition, the social dialogue project undertakes a number of activities, which contribute to the enhancement of the capacity of the social partners, and increase their knowledge of the issues related to the provisions and requirements of the Convention.</p> <p>Moreover, given the necessary constitutional phases the Labour Code and the amendments thereto have to pass through for approval, their development represents a serious challenge. In the first instance, consultations would be held with the parties concerned, and, as a second phase, the amendments would be brought before the competent authorities, in order to begin the process of constitutional measures, and would be submitted to the parliament in the framework of a parliamentary procedure, which has been confirmed by the Constitution, with a view to ensure effective participation of all categories of civil society. In addition to all of these procedures aforementioned, several bodies and a big number of staff would be necessary for achieving progress to this effect, let alone the material and technical capacity that would be available on the side of the social partners.</p> <p>2007 AR: In response to the GFJTU's observations, the Government indicated that registration was formal and there was no government interference in trade unions' elections.</p> <p>In response to the ICFTU's observations, the Government made the following comments: (i) a strike can take place before obtaining the prior permission of the Government. In this regard, section 135 of the Labour Code provides that "No worker shall go on strike without giving the employer, and not the Government, notice thereof at least fourteen days before the date set for the strike". All strikes, which take place in the country, are applied in practice according to the rules provided by the law. The Ministry has never tried to oblige workers to give it notice of their strikes or to have its approval. On the contrary, it was always endeavouring to urge parties to abide by law, and in particular, that: workers give notice of the strike to the employer within the legally determined period; and employers inform workers of their intention to lock-out within the legally determined period for this purpose; (ii) section 97 of the Labour Code has given the workers in any occupation the right to establish their own trade union. Moreover, the classification and identification of groups of occupations and industries for the purpose of establishing trade unions representing their workers cannot be achieved without the agreement of the workers' movement itself, according to section 98 of the Labour Code. The decision of the Registrar of Trade Unions concerning the registration of a trade union is associated with certain requirements mentioned in section 102 of the Labour Code, such as the submission of an application by the founding members accompanied by the statutes of the union and the election of the first administrative board. This means that his authority is limited rather than absolute. Furthermore, his decision to register a union or not is not deemed final since an appeal against that decision can be submitted to the Supreme Court by the founding members or by any person who has suffered damages. It is true that the General Federation of Jordanian Trade Unions (GFJTU) is the only existing Federation to date, but the law has given the trade unions the right to form other federations among themselves, without the approval of the Government (section 110 of Labour Code).</p> <p>2005 AR: According to the Government: the main difficulties encountered in Jordan in realizing the PR in Jordan are as follows: (i) social and (ii) economic circumstances and legal provisions.</p> <p>2000-2005 ARs: In response to the GFJTU's and ICFTU's observations, the Government mentioned the following observations: (i) the role of trade unions in the Ministry of Labour is confined to formal registration and declaration of the registered trade unions; (ii) the Government does not intervene in the work or activities of workers' and employers' organizations; (iii) the establishment of a list of professions for the purpose of classifying trade union was done in consultation with workers' representatives in order to avoid conflicts between trade unions; (iv) there is no need for Government's authorization on strike and non-Jordanians are not barred from using this right by the Labour Code; (v) public sector workers are governed by special laws; (vi) most of agricultural workers are covered by the provisions of the Labour Code, but it is difficult to organize them because of the seasonal nature of their work; (vii) household workers are excluded from the Labour Code mainly because of the particularity of their relationship with their employer that makes it difficult to subject them to the application of the Labour Code and (viii) most of the agricultural workers are covered by the provisions of the Labour Law.</p>
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		2003-2004 ARs: to the Government: the main difficulties encountered in Jordan in realizing the PR in Jordan are as follows: (i) social values, cultural traditions; (ii) social and economic circumstances; (iii) legal provisions; and (iv) lack of social dialogue on this PR.
TECHNICAL COOPERATION	Request	<p>2009 AR: According to the Government: ILO's support is needed to: (i) strengthen the capacity of the Government and the employers' and workers' organizations regarding the PR, including on laws and experiences from different countries; and (ii) to encourage trade unions to promote the dissemination in Jordan of good practices in the world concerning the PR.</p> <p>According to the GFJTU: The ILO's support is needed to assist the Ministry of Labour in the ratification of C.87.</p> <p>2008 AR: According to the Government: ILO technical assistance is required regarding overseas companies based in Jordan and the training of migrant workers. Jordan needs to cooperate with the ILO and with all other competent bodies in the following fields: programmes aimed at raising awareness of the concepts related to the subject matters and focused on the three production and official parties concerned, including parliamentarians, in such a way that the development of the legislation would be facilitated; programmes, inside and outside the Kingdom, aimed specifically at enhancing the capacity of the officials of the Ministry working in the field of International Labour Standards (ILS), to deal with the matters concerning these standards; familiarize representatives of the social partners with the experience and the legislation of developed countries in these fields through field trips and cooperation with, and consultation of the social partners in these countries.</p> <p>The GFJTU requested ILO support in assisting the Government to ratify C.87. It added that training on collective bargaining was also needed.</p> <p>2007 AR: According to the GFJTU: There is a need for capacity building of trade unions on the PR, especially on the provisions of C.87.</p> <p>2005 AR: According to the Government: Needs for technical cooperation to facilitate the realization of the PR in Jordan exist in the following areas, in order of priority: (1) strengthening tripartite social dialogue; strengthening capacity of workers' organizations; (2) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle; (3) awareness-raising, legal literacy and advocacy; (4) strengthening data collection and capacity for statistical analysis; (5) Sharing of experiences across countries/regions; (6) legal reform (labour law and other relevant legislation); (7) capacity building of responsible government institutions; (8) training of other officials (police, judiciary, social workers, teachers); and (9) strengthening capacity of employers' organizations.</p>
	Offer	ILO
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) encouraged the Government of Jordan (and few other governments) to complete the legal review process to remove the obstacles to ratification of C.98. They acknowledged the high number of promotional activities concerning the realization of the PR in Jordan (and some other countries), and encouraged the Office to maintain its support to these activities. Finally, they noted that restrictions on the right to organise of certain categories of workers in Jordan (and some other countries), such as migrant workers, domestic workers, workers in the export processing zones (EPZs), workers in the public service and agricultural workers, were not compatible with the realization of this principle and right (Cf. Paragraphs 32, 35 and 38 of the 2008 AR Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize for migrant workers (Cf. Paragraph 37 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2004 AR: The IDEAs indicated that Jordan had requested ILO technical assistance for realizing the principle and right (Cf. Paragraph 84 of the 2003 Annual Review Introduction – ILO: GB.289/4).</p> <p>2003 AR: The IDEAs were encouraged to see the Government of Jordan pointing out the needs in this country to strengthen the capacity building of workers' and employers' organizations and that it turned to the ILO for help. In light of requests by Jordan for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, they called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field. (Cf. Paragraphs 73 and 74 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: KENYA

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, since the start of the Annual Review (AR) in 2000.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Federation of Kenya Employers (FKE) and the Central Organization of Trade Unions (COTU-KENYA) through communication of Government reports and tripartite meetings on reporting issues.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the FKE. 2007 AR: Observations by the FKE. 2006 AR: Observations by the FKE. 2005 AR: Observations by the FKE.	
	Workers' organizations	2009 AR: Observations by COTU-KENYA. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by COTU-KENYA. Observations by the ITUC. 2007 AR: Observations by COTU-KENYA. Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the ICFTU. 2005 AR: Observations by COTU-KENYA. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Kenya ratified in 1964 the Right to Organise and Collective Bargaining Convention, 1949 (No .98) (C.98). However, it has not yet ratified the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87) (C.87).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Radification intention	<p>YES, since 2001, for C.87.</p> <p>2009 AR: According to the Government: Freedom of association is recognized in the national Constitution. However, a consensus is needed with the social partners for the ratification of C.87. According to COTU-KENYA: A new set of labour laws was proposed to facilitate ratification of this instrument.</p> <p>2008 AR: According to the Government: the labour law bills are currently before Parliament. Once they are adopted, the process of ratification will be finalized in cooperation with the social partners. The FKE expressed its support to the ratification of C.87 by Kenya. COTU-KENYA also expressed its support to the ratification of C.87 by Kenya and stated that it was actively participating in the consultation process.</p> <p>2007 AR: The Government indicated that the ratification of C.87 would be considered after the enactment of the revised labour laws. The FKE and COTU-KENYA indicated that they were still participating in the ratification process for C.87.</p> <p>2006 AR: According to the Government: Ratification of C. 87 will depend on the outcome of the revision of the Constitutional and Labour Law. The FKE and COTU- KENYA indicated that there are actively participating in the consultation process on the ratification of C. 87 by Kenya.</p> <p>2005 AR: According to the Government: C. 87 has not yet been ratified because labour legislations in Kenya are obsolete. However, the new labour laws will pave the way for ratification of this instrument.</p> <p>2001 AR: According to the Government: While considering the ratification of C. 87 in consultation with the social partners, the Government reported that it will soon embark on a review of all labour laws, especially with regards to the provisions of the Trade Unions Act CAP 233 that are not in conformity with various Articles of the Convention. It further mentioned that ILO technical assistance would certainly strengthen ratification prospects for this Convention.</p>
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>YES</p> <p>2008 AR: According to COTU-KENYA: The draft of the Constitutional Bill has been rejected by referendum but Article 80 of the current Constitution respects the provisions of C. 87.</p> <p>2007 AR: The Constitution (Article 80) provides for freedom of assembly and association. Moreover, a draft Constitutional Bill is under consideration by the Parliament.</p>

		Policy/ legislation and/or regulations	<ul style="list-style-type: none"> • Legislation: The Trade Unions Act CAP 233, the Trade Disputes Act CAP 234 and the Industrial Relations Charter (Revised) 1984 relate to the PR. However, a labour law review process is currently being carried out by the Government in cooperation with the employers' and workers' organizations. 2008 AR: According to COTU-KENYA, the Labour Relations Bill regrouping the Trade Disputes Act and the Trade Unions Act is currently being debated before Parliament to be enacted into law. This Bill covers most of the principles entrusted in C.87. 2007 AR: According to the FKE: The labour law revision is still being carried out, in cooperation with the social partners and the ILO in order to take better consideration of freedom of association. 2006 AR: According to the Government: The Draft Labour Law is being reviewed by the Attorney General. 2004-2005 ARs: Thanks to ILO funding, the Task Force to review national labour laws completed its process and handed over the proposed Bills to the Attorney General for onward transmission to Parliament. 2003 AR: According to the Government: A Task Force to review labour laws and harmonize them with the provisions of ratified Conventions and ILO fundamental Conventions was established in May 2001 with the support of the ILO/SLAREA (Strengthening Labour Administration and Labour Relations in East Africa) Declaration Programme. 2002 AR: According to the Government: National labour laws need to be reviewed to incorporate the provisions of ratified Conventions and those of the fundamental principles and rights at work. 	
		Basic legal provisions	(i) The Constitution (article 80); (ii) Trade Unions Act CAP 233; (iii) Trade Disputes Act CAP 234; and (iv) the Industrial Relations Charter (Revised) 1984.	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2002-2005 ARs: All categories of employers can set up their organizations. Prior government authorization is necessary to operate employers' organizations, namely through compulsory registration by the Registrar of Trade Unions (Trade Unions Act CAP 233, section 9(1)).
			For Workers	2002-2005 ARs: According to the Government: Prior government authorization is necessary to operate workers' organizations, namely through compulsory registration by the Registrar of Trade Unions (Trade Unions Act CAP 233, section 9(1)). FOA can be exercised by medical professionals, teachers, agricultural workers, workers engaged in domestic work, workers in export processing zones (EPZs) or enterprises/industries with EPZ status, migrant workers, workers of all ages and workers in the informal economy. However, it cannot be exercised by workers engaged in the administration of State, workers in uniformed services (armed forces, prison forces and their services or reserved forces) and workers in the National Youth Service. Furthermore, the Industrial Relations Charter (Revised) 1984 provides for the categories of employees in an organization who are excluded from belonging to any workers' organizations. These include managerial, secretarial and security staff and their assistants or understudies.
			Special attention to particular situations	2003-2005 ARs: According to the Government: A special attention is envisaged for religious minorities, women workers, child workers, disabled workers, migrant workers and refugees. 2000 AR: According to the Government: Agricultural workers, domestic workers, workers in EPZs, workers in the informal economy and migrant workers are given special attention with respect to the PR.

			Information/ Data collection and dissemination	According to the Government: There is a lack of information and data.
		At international level		According to the Government: There are no particular restrictions for the international affiliation of employers' and workers' organizations.
	Monitoring, enforcement and/or sanction mechanisms	<p>2000-2005 ARs: According to the Government: The Registrar of Trade Unions can require financial information and inspect books of accounts of trade unions (Trade Unions Act CAP 233, section 48). S/he can also cancel or suspend the registration of a trade union under certain conditions (Trade Unions Act CAP 233, section 17 (1)). Inspection/monitoring mechanisms are envisaged to ensure the implementation of the PR, and there is a need for further ILO cooperation in terms of capacity building and reporting.</p> <p>The PR is enforced through law, collective agreements, free dispute settlement procedures and tripartite consultations at all levels.</p> <p>In instances where the PR has not been respected, the Minister of Labour has the power to order any employer or person to respect workers' rights, namely by recognizing a union for the purpose of collective bargaining (CB) in accordance with legal prescriptions (Trade Union Disputes Act CAP 234, Section 5). Furthermore, the Government reports that the issue of penal, civil and administrative sanctions for the violation of the PR is addressed by Task Force to draft the new labour laws and under the ongoing reform of the public service.</p>		
	Involvement of the social partners	<p>2006 AR: The FKE and COTU-KENYA stated that they participated actively in the national labour law revision process.</p> <p>2002-2003 ARs: According to the Government: Employers' and workers' organizations have been involved in: (i) the elaboration of the Industrial Relations Charter (Revised) 1984; (ii) the National Advisory Board; (iii) the conclusion of collective agreements; (iv) the Industrial Courts; and (v) the Task Force to review national labour laws and harmonize them with the provisions of ratified Conventions and ILO fundamental Conventions. Moreover, a panel appointed by the Government and consisting of trade union representatives, government officials and independent members has been deliberating on the disputes concerning the Kenya National Union of Teachers since 2002.</p>		
	Promotional activities	<p>2009 AR: The Government stated that it had organized various workshops on international labour standards, including freedom of association issues, with ILO's support.</p> <p>COTU-KENYA stated it had set up a training centre for workers with the support of the Government and the Canadian Labour Organisation.</p> <p>2008 AR: According to the Government: A tripartite workshop on International Labour Standards (ILS) and national laws was held from 17th to 21st July 2006 in order to sensitize officers on ILS. Moreover, two industrial Court Judges will be attending the ILS course for judges, lawyers and legal educators in September 2007 in Turin. Finally, the Government indicated that tripartite discussions are held in the Labour Advisory Board on how to respect, promote and realize the PR.</p> <p>The FKE organized several workshops in February and regularly carries out training programmes under its Management Consulting Group (MCG).</p> <p>According to COTU-KENYA: several unions have been established namely in the teaching, transport, security sectors.</p> <p>2007 AR: The FKE and COTU-KENYA indicated that they had actively participated in the SLAREA programme and the labour law review process. Following the development of the SLAREA Programme, tripartite institutions and social dialogue had been considerably strengthened in Kenya and has strengthen collaboration between the Government, employers and workers organizations.</p> <p>2002 AR: According to the Government: Training of government officials and social partners in the labour field has been carried out.</p>		

	Special initiatives/Progress	<p>2008 AR: According to the Government: the issue of lack of resources and staffing has been improved which will undoubtedly strengthen the Government's capacity.</p> <p>2006 AR: According to the Government: As a successful/special initiative, continuous consultations are being held with the social partners concerning the PR and the new constitutional and legislative provisions.</p> <p>According to the FKE: As a successful/special initiative, the training of managers was carried out on general management, including the FPRW.</p> <p>2005 AR: According to the Government: Successful example(s): the union elections held in 2002, which involved all registered trade unions and COTU-KENYA.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2008 AR: The FKE indicated the following challenges: (i) lack of financial resources and oversubscription for training programmes and (ii) lack of capacity of employers and workers in terms of training and consciousness.</p> <p>2006 and 2007 ARs: According to the FKE: the following challenges are as follows: (i) lack of capacity of labour officers in terms of staffing and training in conflict resolution.</p>
		Workers' organizations	<p>2009 AR: According to COTU-KENYA: The post-election crisis has drawn back the progress made in the labour area, in particular with reference to women's participation in trade union activities.</p> <p>The ITUC reiterated some of the challenges it had raised under the previous AR (2008) concerning Kenya, in particular with respect to: (i) restrictions on the right to strike as the law authorizes this right but the criteria for a protected strike (or lock-out) are stringent with formal conciliation procedures but also practical obstructions; and (ii) there are delays on finalizing labour law review.</p> <p>2008 AR: According to COTU-KENYA, the main challenge is the lack of sensitization of workers on their right to freedom of association. It also reiterates the same challenges mentioned in the 2007 AR that are: (i) lack of capacity of labour officers in terms of staffing and (ii) training on dispute settlement. Moreover, trade unions are not receiving sufficient assistance from the Ministry of Labour. Finally, it indicated that only 10-15% of the workers are unionized.</p> <p>The ITUC indicated the following challenges: (i) workers in the armed forces, in prison services, in the National Youth Service as well as those under the Teachers' Service Commission are neither allowed to bargain collectively nor to go on strike; (ii) the right to strike is subject to major restrictions and obstructions; (iii) workers from EPZs can now enjoy effective freedom of association but is strongly restricted.</p> <p>2007 AR: According to COTU-KENYA, the main difficulties encountered in realizing the PR in Kenya are: (i) lack of capacity of labour officers in terms of staffing and (ii) training on dispute settlement.</p> <p>The ICFTU raised the following challenges: (i) workers' complaints about the delays on finalizing the labour law review to incorporate ILO core labour standards; (ii) obstruction on the right to strike; and (iii) workers from EPZs cannot enjoy effective freedom of association.</p> <p>2000, 2001, 2002 and 2006 ARs: According to the ICFTU: the challenges are as follows: (i) excessive power of the Registrar of Trade Unions in refusing registration of trade unions or deregistering them; (ii) denial of trade union rights to civil servants, university academic staff, doctors and dentists; (iii) infrequent respect for FOA, especially in small-sized companies and EPZs; (iii) restrictions on the right to strike (21 to 28 day notice (in essential services) prior to strike, no strikes are permitted during the arbitration and dispute settlement procedure; and (iv) discretionary power of the Minister of Labour to decide whether a strike is legal or not.</p>

	<p>According to the Government</p>	<p>2008 AR: The Government supported COTU-KENYA's observations concerning labour instruction in Kenya. It indicated furthermore that the tripartite partners have agreed on the need to undertake a comprehensive research on the implication of the ratification of C.87 but there are still financial constraints. It added that institutional capacity among social partners for better appreciation of the principles should be strengthened.</p> <p>2007 AR: The Government indicated its support to the FKE's views regarding the lack of staff and capacity building on freedom of association.</p> <p>2001-2005 ARs: According to the Government: The main difficulties encountered in realizing the PR in Kenya are as follows (i) lack of public awareness and/or legal support; (ii) lack of information and data; (iii) social and economic circumstances; (iv) political situation; (v) legal provisions and non-conformity of the Trade Unions Act CAP 233 with the provisions of C.87; (vi) prevailing employment practices; (vii) lack of capacity of responsible government institutions; (viii) lack of employers' organizations; (ix) lack of capacity of workers' organizations; and (x) lack of social dialogue on the PR.</p> <p>In response to the ICFTU's observations, the Government made the following comments: If a prospective trade union does not meet the conditions for registration set out under the Trade Unions Act CAP 233, the Registrar of Trade Unions has no choice but to deny registration to that particular union. However, this decision is subject to appeal to the High Court of Kenya, as this right has been exercised in the past. The ban on the Civil Servants Union, imposed in 1980 due to security reasons, was lifted by the Head of State in November 2001. This allowed public employees to organize themselves. In this regard, two unions represent teachers: the Kenya National Union of Teachers (KNUT) and the Kenya Union of Post Primary Teachers (KUPPET). The law fully protects the enjoyment of trade union activities in all workplaces, irrespective of the size of the enterprise and including the EPZs. If it is established that an employee has been sacked or victimized because of his/her trade union activities, the law grants a compensation of a maximum of 12 months salary. As regards the right to strike, the Ministry of Labour has no discretionary power to declare a strike illegal, given that s/he can declare a strike unlawful only if the machinery put in place has not been complied with, and there is room for appeal against such ministerial orders (Sections 26 and 30 of the Trade Dispute Act).</p>
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TECHNICAL COOPERATION	Request	<p>2009 AR: According to the Government: ILO's cooperation is needed in: (i) disseminating and monitoring the implementation of the new Labour Law; and (ii) strengthening the national labour institutions.</p> <p>COTU-KENYA would appreciate the ILO's support in: (i) articulating a plan of action on social dialogue that will spell out the role of all social partners; and (ii) developing the curriculum of COTU-KENYA's new training centre.</p> <p>2008 AR: According to the Government: technical cooperation should be provided to strengthen the capacity of tripartite partners on ILS as only few officers have undertaken the training. ILO technical assistance is also needed to organize awareness-raising programmes in order to train more labour officers and other social partners on democratic principles and social dialogue. It should furthermore consider funding research on the effects of ratification of C.87 on the industrial relations system in the country. Lastly, Kenya volunteered for a case study and workshops on the FPRW and on Declaration follow-up in the country.</p> <p>According to the FKE and COTU-KENYA, ILO technical assistance is needed for capacity building mainly.</p> <p>2007 AR: The Government, the FKE and COTU-KENYA indicated their regret that the ILO/SLAREA (Strengthening Labour Administration and Relations in East Africa) Declaration Programme was not extended and added that ILO technical cooperation was still needed on awareness raising and capacity building in the areas of freedom of association and social dialogue, but also in respect of research and data collection on the PR. The Government also volunteered for the preparation of a case study followed by a national tripartite workshop on ratification of C.87, with the participation of members of Parliament.</p> <p>2006 AR: According to the Government: ILO technical cooperation should be provided to Kenya with a view to sensitizing the social partners and stakeholders on the draft Constitution and laws and strengthening the institutional capacity of the Government and the social partners for the realization the PR. In this respect, the ILO/SLAREA Programme should be extended.</p> <p>According to the FKE: There is a need for ILO technical and material support to train managers in the promotion of productivity through collective bargaining process.</p> <p>The FKE and COTU-KENYA wished the extension of the ILO/SLAREA Declaration Programme, in particular for the implementation process of the new labour laws at regional level, so as to strengthen the realization of the 1998 ILO Declaration in Kenya.</p> <p>2005 AR: According to the Government: Needs for technical cooperation project to facilitate the realization of the PR in Kenya exists in the following areas, in order of priority: (1) strengthening data collection and capacity for statistical analysis; (2) strengthening social dialogue; (3) sharing of experiences across countries/regions; (4) capacity building of responsible government institutions; (5) strengthening capacity of employers' organizations; (6) strengthening capacity of workers' organizations; (7) awareness-raising, legal literacy and advocacy; and (8) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR.</p> <p>The Government hoped that the ILO/SLAREA Declaration Programme would be extended so as to sustain the capacity building of labour administration and employers' and workers' organizations in promoting the PR as well as other FPRW in Kenya, especially in the area of collective bargaining and social dialogue.</p> <p>This request is supported by the FKE, which hoped that the ILO would be in a position to offer further technical assistance in order to allow the Government to finalize the ratification of C.87.</p>
	Offer	2000-2006 ARs: ILO advisory services and the ILO SLAREA Declaration Programme.

EXPERT-ADVISERS’ OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) encouraged Kenya (and few other governments) to complete its legal review process to remove the obstacles to ratification of C.87. They also acknowledged the high number of promotional activities concerning the realization of the PR in Kenya (and some other countries), and encouraged the Office to maintain its support to these activities. However, the IDEAs noted that restrictions on the right to organise of certain categories of workers in Kenya (and some other countries), such as workers in the export processing zones (EPZs) and workers in the public service, were not compatible with the realization of this principle and right (Cf. Paragraphs 32, 35 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize for workers in the export processing zones (Cf. Paragraph 37 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The IDEAs listed Kenya among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (Cf. Paragraph 13 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2003 AR: The IDEAs were encouraged to see the Government of Kenya pointing out the needs in this country to strengthen the capacity building of workers’ and employers’ organizations and that it turned to the ILO for help. In light of requests by Kenya for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, they called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field (Cf. Paragraphs 73 and 74 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: KOREA, REPUBLIC OF

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, except for the 2003 Annual Review (AR).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Korea Employers' Federation (KEF); the Federation of Korean Trade Union (FKTU); and the Korean Confederation of Trade Union (KCTU) through communication of Government's report.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by the KEF. 2002 AR: Observations by the KEF. 2001 AR: Observations by the KEF. 2000 AR: Observations by the KEF.	
	Workers' organizations	2009 AR: Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the ITUC. 2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the ICFTU. 2005 AR: Observations by the ICFTU. 2004 AR: Observations by the KCTU. Observations by the KFTU. 2002 AR: Observations by the ICFTU. Observations by the KCTU. 2001 AR: Observations by the ICFTU. 2001 AR: Observations by the KFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Korea has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>Under consideration, since 2006, for both C.87 and C.98.</p> <p>2009 AR: The Government indicated that it was continuing its study on C.87 and C.98. The KEF stated that it was supporting the ratification of C.87 and C.98.</p> <p>2008 AR: The Government indicated that ratification of C.87 and C.98 is still under study.</p> <p>2007 AR: The Government indicated that it would continue to review the possibility to ratify C.87 and C.98 in considering the existing national laws and institutions as well as any other developments in the future. It has made continuous efforts towards ratification. For instance, it has conducted in 2003 <i>A Study of Policy Tasks to Ratify ILO Conventions on Freedom of Association</i>.</p>	
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>YES</p> <p>The 1948 Constitution (article 33, paragraph 1) provides that workers shall have the right to independent associations, collective bargaining and collective action.</p>	
		Policy/Legislation and/or Regulations	<p>• Legislation:</p> <p>The Trade Union and Labour Relations Adjustment Act (TURLAA), 1997, the Bill on the Establishment, Operation, etc. of Public Officials' Union, 2004 to come into force in January 2006, the State Public Official Act and the Local Public Official Act relate to the principle and right (PR).</p> <p>2008 AR: According to the Government: Based on the tripartite agreement of September 2006 regarding numerous legal and institutional reform measures including the compulsory arbitration system, the reform measures were made into law with the adoption of the revised TURLAA by the National Assembly on 22nd December 2006. The main features of the revision bills are as follows: (i) the notification requirement for third-party assistance was repealed as of 1st July 2007; (ii) compulsory arbitration for essential public services is to be abolished as of 1st January 2008. Instead, a minimum service system will be introduced and the use of a replacement workforce during strikes will be allowed. With regards to the implementation of enterprise-level union pluralism and ban on wage payment to full-time union officials, it is postponed until 2009 through agreement between labour and management.</p> <p>2004-2006 ARs: According to the Government: A new Bill was adopted in 2003 in order to better guarantee public officials' right to organise. The 2004 Bill on the Establishment and Operation, etc. of Public Officials' Trade Unions will enter into force in January 2006.</p> <p>2000-2002 ARs: The Trade Union and Labour Relations Adjustment Act (TURLAA) of 1997, adopted the principle of multiple unionism with a reservation that the union pluralism at the enterprise level would be effective from 2002 (section 5, paragraphs 1 and 3, of the TURLAA). The Ministry of Labour is working on improvements to the legal system, in order to secure freedom of association and the effective recognition of the right to collective bargaining.</p>	
		Basic legal provisions	(i) The 1948 Constitution (article 33, paragraph 1); (ii) the TURLAA, 1997; (iii) the Bill on the Establishment, Operation, etc. of Public Officials' Union, 2004 to enter into force in January 2006; (iv) the State Public Officials Act; and (v) the Local Public Officials (section 58).	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	<p>2004 AR: Government authorization or approval is not required to establish employers' organizations, or to conclude collective agreements. Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry and national levels by all categories of employers.</p>

			For Workers	<p>2007 AR: According to the Government: The Act on the Establishment and Operation, etc. of Public Officials’ Trade Unions (2004) which allows public officials to establish trade unions and exercise the right to collective bargaining, took effect on 28 January 2006 and since then the protection of basic labor rights of public officials has been significantly enhanced.</p> <p>2004 AR: Government authorization or approval is not required to establish workers’ organizations, or to conclude collective agreements. Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry and national levels by the following categories of persons: medical professionals; teachers; agricultural workers; workers engaged in domestic work; workers in export processing zones (EPZs) or enterprises/industries with EPZ status; migrant workers; workers of all ages; and workers in informal economy. However, freedom of association and the right to collective bargaining cannot be exercised by workers in the public service, except those engaged in manual labour in postal services, railways business, etc. In addition, only freedom of association can be exercised at international level.</p>
			Special attention to particular situations	<p>2004 AR: According to the Government: The new Law on the Establishment and Operation, etc. of Public Officials Trade Unions, 2004 guarantees public services trade unions’ right to strike and at the same time protects public interests.</p>
			Information/Data collection and dissemination	<p>2009 AR: According to the Government: As of March 2008, 179 complaints about unfair labour practice were filed with the Regional Labour Offices and 221 applications for remedy were processed by the Regional Labour Relations Commissions.</p> <p>2000-2005 ARs: According to the Government: Data exist on trade unions’ density.</p>
		At international level	According to the Government: The Republic of Korea recognizes the exercise of the PR at international level, only with regard to freedom of association.	
	Monitoring, enforcement and sanctions mechanisms	<p>2007 AR: According to the Government: The TURLAA considers as an unfair labour practice any impediments on trade unions’ establishment or operation by employers. In this respect 195 indictments for unfair labour practices were recorded as of August 2006.</p> <p>2005 AR: According to the Government: Compulsory arbitration for essential public services has been introduced to ensure harmony between public interests and the workers’ right to act collectively and a minimum level of service during negotiations. In addition, the labour rights of workers in the public sector have been gradually expanded, following an agreement at the Tripartite Commission.</p> <p>2004 AR: According to the Government: The following measures have been implemented to realize the PR: (i) inspection/monitoring mechanisms; (ii) penal sanctions; (iii) civil or administrative sanctions; (iv) capacity building of responsible government officials; (v) training of other government officials.</p> <p>2000-2005 ARs: According to the Government: In instances where the PR has not been respected, employers who infringe the rights of trade unions to organize or bargain collectively will be subject to legal sanctions under charges of unfair practices, in accordance with sections 81 and 90 of the TURLAA, 1997.</p>		
	Involvement of the social partners	<p>2009 AR: According to the Government: Tripartite consultations have been continuously implemented regarding industrial relations reform.</p> <p>2004 AR: According to the Government: Tripartite consultations have been implemented in relation to this PR.</p> <p>2000–2001 ARs: The Government stated that it had devoted efforts to stimulating dialogue on the promotion of the PR within the Tripartite Commission.</p>		

	Promotional activities	<p>2009 AR: According to the Government: Tripartite consultations are being implemented regarding the reform of industrial relations.</p> <p>2004 and 2007 ARs: According to the Government: The following measures have been implemented to realize the PR: (i) training of other government officials; (ii) capacity building for employers' and workers' organizations; (iii) awareness-raising/advocacy.</p>	
	Special initiatives/Progress	<p>2007 AR: According to the Government: Several special initiatives were taken following the recommendations of international organizations: A "Committee for the Advancement of Industrial Relations Laws and Systems" was established in March 2006. It has made suggestions on how to: (i) establish multiple unions at enterprise level; (ii) repeal the third-party support notification requirement; (iii) abolish the compulsory arbitration system; etc. Moreover, a "Tripartite Representatives Committee" was set up in March 2006 to pursue social dialogue aiming to improve labour-related legislation. This Committee has also held negotiations more than 40 times during the last six months, and finally reached a tripartite agreement to abolish the compulsory arbitration system for essential public services and the third-party support notification requirement. On the other hand, through the Government's efforts, the compulsory arbitration system and the third-party support notification system will be repealed. In addition, public officials' rights to organize and to bargain collectively will be protected. It is considered that these reforms should pave the way for Korea to have laws and systems better in line with international labour standards.</p> <p>2004-2005 ARs: According to the Government: A special initiative was taken following an agreement at the Tripartite Commission of the Bill of 23 June 2003 guaranteeing the labour rights of public officials, now under legislative process.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2001 AR: According to the KEF: There are restrictions on collective action in essential services.</p> <p>2000 AR: According to the KEF: The TURLAA provisions banning the payment to full-time union officials should be maintained to secure independence of trade unions.</p>

		<p>Workers' organizations</p>	<p>2009 AR: The ITUC reiterated the same challenges it mentioned below under the previous AR (2008).</p> <p>2008 AR: The ITUC noted the following challenges: (i) under the Law on Assembly and Demonstration, any gathering is banned within a hundred metres of foreign diplomatic missions. As a result many large companies, such as Samsung, have invited embassies to rent offices in their buildings. This tactic effectively prevents workers from demonstrating in front of the company's headquarters; (ii) third party intervention in collective bargaining and industrial disputes is still hindered; (iii) the law on Special Economic Zones (SEZs) contains preferential provisions in relation to foreign companies investing in the SEZs, which exempts them from many national regulations on the protection of the environment and labour standards. It is feared that this will result in further violations of workers' rights, since this law also makes it easier to hire "irregular" workers, who will have little or no protection; (iv) the Act on Employment of Foreign Workers and the Employment Permit System (EPS) allow employers to violate migrant workers' trade union rights with impunity. They are permitted only three years contracts and are strictly forbidden from changing employers during their stay in the country; (v) on May 2006, a riot police invaded a lawful demonstration in front of the Rural Development Administration. As a result, several trade unionists were severely beaten and arbitrarily arrested; (vi) a campaign of intimidation was launched by Woojin Industry, a subcontract firm created and controlled by LaFarge Halla Cement after finding out that two-third of the workers had joined the Korean Chemical and Textile Workers' Federation (KCTF); (vii) intimidation and violence was carried out by the Sejong Hospital towards the Korean Health and Medical Workers Union (KHMWU) that exercised its right to strike in January 2006; and (viii) systematic anti-union campaign was engaged towards workers belonging to the Koryung Electronics Workers' Union Local, such as termination of contracts, mass dismissals without reinstatement, or imprisonment of the union's president.</p> <p>2007 AR: According to the ICFTU: (i) Persecution by the Government of the public servants' unions; (ii) the Law on the Establishment and Operation of Public Officials' Trade Unions of 31 December 2004 excludes many categories of workers (such as managers, human resources personnel, personnel dealing with trade unions or industrial relations) in the private sector, and special public servants such as military, police, fire-fighters, politically-appointed officials, and high level public officials from the right to organize; (iii) the right to collective bargaining is recognized but limited to some subjects of negotiation; (iv) no sanctions against unfair labour practices; (v) strong restrictions concerning the right to strike in the public sector; (vi) interference of the Government in the trade unions' affairs; (vii) foreign companies are exempted by the Law on Special Economic Zones (SEZs) of July 2003 from the obligation to respect the labour legislation; (viii) severe limitations on the right to strike and to create unions in the private sector since where an employer creates a union, it is legally forbidden to organise alternative unions.</p> <p>2006 AR: The ICFTU observed the following: (i) civil servants will be allowed to organize within administrative predefined units by the Bill on the Establishment and Operation, etc of Public Officials Trade Unions, 2004, with the exception of managers, human resources personnel dealing with trade unions or industrial relations, and specific public servants such as military, police, firefighters, politically appointed officials, and high level public officials. In addition, a union member can work full-time for the union, but only with the authority of the employer; (ii) civil servants will have the right to collective bargaining, but the subjects of negotiations are limited to matters concerning trade unions members' pay and welfare and other working conditions, and laws and budgets prevail over collective bargaining agreements; (iii) the Bill, however, maintains the strike ban; as does the TURLAA for central government and local government workers and the 1999 Law on the Establishment and Operation, etc. of Trade Unions for Teachers- striking workers and union leaders can be prosecuted and sentenced under section 314 of the Penal Code, which prohibits "obstruction to business"; (iv) the TURLAA provides for compulsory arbitration for disputes in "essential public services" if the parties cannot come to an agreement on their own; (v) The right to</p>
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		<p>demonstrate is limited, as under the Law on Assembly and demonstration, any gathering is banned within a hundred meters of foreign diplomatic missions (as a result large companies have invited embassies to rent offices in their building); (vi) under the TURLAA, 1997, employers are banned from remunerating trade union leaders until 2006; and union pluralism at company level is banned until December 2006; (vii) as a result, many employers have resorted to creating management-controlled unions, known as “paper unions”; (viii) There is a ban for dismissed workers to remain members of a union, and non union members are not eligible for trade union office; (ix) the Third party intervention in collective agreements or industrial disputes is hindered by the compulsory arbitration.</p> <p>2005 AR: According to the ICFTU: The trade unions observed that the new law makes it easy to hire "irregular" workers, who will have little or no protection.</p> <p>2004 AR: The Federation of Korean Trade Unions (FKTU) made the following observations: (i) the TURLAA provides for the right to organize and collective bargaining; (ii) government authorization or approval is required for workers in public services as regard collective agreements; (iii) the right to organize and bargain collectively is recognized by the Constitution (article 33); (iv) employer's organizations should not be exempted from the responsibility of realizing the PR.</p> <p>The KCTU made the following observations: (i) it does not agree with the definition of “the effective recognition of the right to collective bargaining” provided by the Government; (ii) there is no effective sanction mechanisms in case of violation of collective agreement by employers; (iii) there is no governmental internal mechanism for the implementation of collective agreement; (iv) freedom of association is provided for teachers under the "Act on the Establishment and Collective Bargaining of Teachers Organizations", not under the “Trade Union and Labour Relations Adjustment Act”, which led to various restrictions on collective bargaining; (v) migrant workers do not have the right to exercise freedom of association; most workers in the informal economy are denied the right to organize or join a union; (vi) workers in “essential services” are governed by a “compulsory arbitration” mechanism, which restricts the right to collective bargaining; (vii) there are restrictions on freedom of association at enterprise level as multiple unions are prohibited under the Trade Union and Labour Relations Adjustment Act (Addenda, section 5, paragraph 1); (viii) there is neither effective recognition of the right to collective bargaining at the supra-enterprise levels and nor collective bargaining mechanisms at the supra-enterprise level; (ix) the current system of "giving notice" on the formation of a union under the provision of the Trade Union and Labour Relations Adjustment Act works as an authoritative measure.</p> <p>2004 AR: The KFTU called for negotiations at the industrial level. It also observed that the PR was not recognized in the country, contrary to the Government’s statement.</p> <p>2002 AR: According to the KFTU: The Tripartite Commission in Korea is a presidential advisory body only, but not a social dialogue mechanism like in other countries.</p> <p>The ICFTU raised the following challenges: (i) there are obstacles to the right to strike (complaint cases); (iii) broad categories of civil servants remain deprived of the right to belong to professional associations.</p> <p>2000 AR: According to the KFTU: (i) the provisions of the TURLAA banning payment to full-time union officials should be repealed; (ii) the TURLAA should be revised in order to allow the unemployed to join the trade unions; (iii) the system of compulsory arbitration should not be imposed in case of labour disputes in the essential public services when there is no possibility of mediation.</p> <p>The ICFTU observed the following: (i) the authorities had refused to register the Korea Confederation of Trade Unions (KCTU) for four years; (ii) dismissed workers cannot be members of trade unions, and union officials have to be elected amongst union members; (iii) public service workers cannot bargain collectively or strike; (iv) teachers cannot go on strike.</p>
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	<p>According to the Government</p>	<p>2009 AR: According to the Government: The TURLAA considers as an unfair labour practice any impediments on trade union establishment or operations by employers. In this respect, 179 complaints about unfair labour practice were filed with the Regional Labour Offices and 221 applications for remedy were processed by the Regional Labour Relations Commissions as of March 2008. In response to the ITUC's observations, the Government further indicated the following: (i) the Act on the Employment etc. of Foreign Workers (AEFW) prohibits employers from giving unfair and discriminatory treatment to foreign workers on the grounds that they are foreigners. The AFWE and the Employment Permit System (EPS) guarantee that foreign workers can enjoy all the labour rights granted under labour laws; (ii) the ITUC's claim that collective action often becomes illegal because of the complicated legal procedures for organizing a strike is unfounded because in the case of such action, it is required to undergo mediation by the Labour Relations Commissions and this is a minimum requirement imposed to support autonomous dispute settlement between labour and management; (iii) the Government protects peaceful demonstrations and strikes. However, in case of violent demonstrations and strikes, the Government uses the police force to protect the public interest. However, the police exercises such power only in inevitable cases and to a minimum necessary extent; (iv) according to the Criminal Procedure Act, a judge is responsible for issuing an arrest warrant in order to promptly deal with illegality and investigate, even in the case illegal violent strikes and rallies the leaders and masterminds of which often refuse police's request to show up or go underground. All trials are conducted openly with strict evidence required and the defendant's right to defend sufficiently guaranteed pursuant to the Criminal Procedure Act, and punishment is determined in accordance with the court's punishment standards; and (v) the union members referred to by the ITUC were detained in isolation not to block their collective action, but to prevent any distortion that might happen during the investigation and trial, the length of each visit is limited to 12 minutes in case of general visits by family members and relatives and to 30 minutes in case of visits by lawyers.</p> <p>2008 AR: In response to the ITUC's observations, the Government made the following comments: according to decision of October 2003 by the Constitutional Court, the law prohibiting the holding of a rally less than 100 meters away from any foreign diplomatic mission is not an extreme regulation. Furthermore, the provision of third party intervention was abolished in December 2006, as well as related penal provisions, in order to strengthen labour-management autonomy. With regards to the Act on SEZs, it stipulates only two exceptions applicable to free economic zones. One is the partial exemption from holiday rules prescribed by the Labour Standard Act, and the other is the expansion of the scope of jobs permitted for temporary agency workers and the extension of the scope of their employment period, though this is limited to professional jobs determined after deliberation and resolution at the Deliberation Committee for Free Economic Zones. In addition, foreign workers can enjoy all the existing labour rights, including freedom of association. Regarding the change of workplace under the Employment Permit System (EPS), a change of workplace is allowed up to four times when continuance of normal employment is difficult due to suspension or closing of business or causes attributable to the employer. In practice, 27,353 persons (24%) of EPS workers applied to change their work places and almost all cases were accepted by the job centres from August 2004 to March 2007. With respect to several events, the Government made the following observations: (i) over 200 KGEU members forcefully occupied the corridor in front of the Rural Development Administration's office and tried to forcefully enter a nearby police station and clashed with the police. As a result, four of them were arrested and indicted. Their trial is currently pending; (ii) in first instance, the Regional Labour Relations Commission judged that Lafarge Halla Cement should reinstate Woonjin Industry's workers, and rejected the union's claim regarding unfair labour practice. However, the National Labour Relations Commission judged that the case constituted neither unfair dismissal nor unfair labour practices because firstly, the two companies were in contract relations with each other and Lafarge could not therefore be seen as the employer of the dismissed workers and secondly, the business closure was not considered to have been prompted by union activities. The workers filed no appeal so the judgement was confirmed; (iii) the parties concerned in the Sejong Hospital incident resumed their talks in March 2007 and reached an agreement in July; and (iv) in August 2005, the strike at Kiryung Electronics caused some damages, and the company brought a civil suit against the Union President. The company experienced another dispute as the union launched a strike in October 2005 and failed to reach an agreement. With regard to the dismissal of the union president, the National Labour Relations Commission concluded that the dismissal was legitimate.</p>
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	<p>2007 AR: According to the Government: Neither employers nor workers are prepared to enforce the legal provisions on multiple unions at enterprise level and the ban on wage payment to full-time union officials, because of a sharp conflict of opinions among them. Therefore, based on the agreement among tripartite parties, the enforcement of these provisions will be postponed for three years in the spirit of stabilizing the industrial relations. During this grace period, the tripartite committee will intensively discuss detailed standards and methods of enforcement.</p> <p>In response to the ICFTU's observations, the Government made the following comments: (i) following the Act on the Establishment and Operation of Public Officials' Trade Unions enacted on January 2006, public officials are guaranteed the right to organize, including the right to establish a trade union and engage in union activities, and the right to conclude collective agreements through negotiation; (ii) as for the right to collective bargaining, only matters concerning policy decisions and appointment that are not directly related to working conditions are excluded from the subjects of negotiation; (iii) there is a system under which in the event of unfair labour practices by employers, public officials and their trade unions can seek remedy by filing their case with a labor relations commission, a neutral organization; (iii) the right to strike for public officials is restricted to maintain minimum service; (iv) it is stipulated in the Constitution that public officials are servants to the nation as a whole, so their status and political neutrality must be guaranteed by laws which is why public officials are not entitled to conduct political activities when they are engaged in union activities; (v) according to the Grand Tripartite Agreement, the recognition of multiple unions at the enterprise level and the ban on wage payment to full-time union officers will be put off for another three years; (vi) a tripartite commission agreed to remove the provisions related to the third-party notification requirement and has already submitted a related revision bill to the National Assembly; (vii) the purpose of the Act on the Designation and Operation of Free Economic Zones is to promote foreign investment, and pursue stronger national competitiveness and balanced development between different regions by improving business environments for foreign companies investing in free economic zones and living conditions for foreigners. The Act has two provisions on exemption from labour standards. The first provision is about granting unpaid holidays instead of paid ones under the Labour Standards Act, granting unpaid instead of paid menstruation leave, and excluding workomic zones from monthly paid leave, etc. However, with the introduction of the 40-hour working week, for all workplaces with five workers or more as well as those in free economic zones, paid menstruation leave was replaced with unpaid and monthly paid leave was abolished. Therefore, the only area where free economic zones are excluded from the application of the Labor Standards Act pursuant to the Act is holidays. One unpaid holiday is granted per week instead of paid a one in free economic zones. The second provision is about excluding workplaces in free economic zones from the provisions restricting occupations for which temporary agency workers can be employed and dispatch periods in the Act on the Protection, etc. of Dispatched Workers. Before applying this provision, those workplaces must undergo deliberation and decision by a separate committee. In spite of the provision, there is no company excluded from the restriction as of November 2006.</p> <p>2004-2005 ARs: According to the Government: The main difficulties encountered in realizing the PR in Republic of Korea are the following: (i) lack of public awareness and/or support; (ii) social values, cultural traditions; and (iii) social and economic circumstances.</p> <p>2005 AR: In response to the ICFTU's observations, the Government made the following comments: (i) Compulsory arbitration is a system introduced to ensure harmony between public interests and the rights of workers to organise and bargain collectively; (ii) there are autonomous dispute settlement between employers and workers when a public interest is not threatened; (iii) the Research Committee for Industrial Relations System Advancement, which has been established by the Government suggested that compulsory arbitration be abolished and minimum level of service during strike be made mandatory in public services in general; (iv) the Government will implement some legislative measures to ensure more rights to trade unions in dispute settlement and to protect public interests.</p>
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		<p>2004 AR: In response to the KCTU, the Government made the following comments: (i) The current TURLAA does not imply any restriction on the right to collective bargaining for trade unions and federation of trade unions at industrial level; (ii) sanctions are provided to employers who violate the right to collective bargaining under the TURLAA; (iii) the “Public Sector Special Committee” has been established through the Tripartite Commission for in order to implementation collective agreements; (iv) there is restriction on the right to collective bargaining for teachers; (v) migrant workers have the right to join trade unions under certain conditions; (vi) multiple unions at the enterprise level are banned until the end of 2006; (vii) the notification for establishing union should not be considered as an authoritative measure; (viii) a Bill has been prepared by the Government and was submitted to the National Assembly in order to promote the rights of workers in public service, including the freedom of association and the right to organize; (ix) sanctions are provided in case of unfair labour practices such as violation of the right to organize and collective bargaining; (x) the Tripartite Commission should not be considered as a governmental organization simply because some specific workers’ organizations are not part of it; (xi) The 1999 Act on Trade Unions for Teachers specifies the right to organize and collective bargaining for teachers; (xii) the KCTU has not sent its comments of the annual report.</p> <p>In response to the FKTU, the Government observed the following: (i) Trade unions cannot bargain collectively due to the fact there are no employers’ organizations at higher levels; (ii) Workers in essential services are not allowed the right to collective bargaining; (iii) The TURLAA provides minimum requirements (non-participation of an employer or ban on financial assistance from an employer for the establishment of a trade union) for the establishment of trade unions; (iv) the right to organize is authorized for manual workers and for certain categories of workers of public service under the TURLAA (section 66.1 of the Public Servants’ Act and section 5) and; for teachers under The 1998 Act on the establishment and operation, etc. of trade unions for teachers (section 7.1); (v) the right to bargain collectively is not guaranteed to trade unions and the federations of trade unions as industrial level because some of them are at odds with eight employers on bargaining methods and levels; (vi) migrant workers employed in domestic service have the right to join a trade union of his/her choice, except foreign industrial trainers registered under the Immigration Control Act; (vii) the right to organize for workers in the informal economy is authorized in consideration of the dual nature of their labour characterized by subordination and independence; (ix) multiple unions at enterprise level have been delayed until the end of 2006, following a Tripartite Agreement on 9 February 2001; (x) reported cases related to unfair labour practices have been successfully investigated by the Government and appropriate measures have been taken correspondingly.</p> <p>In response to the ICFTU’s comments, the Government observed the following: (i) there are restrictions on the right to strike for workers in essential services including hospitals, water service and services of public interest.</p> <p>2002 AR: In response to the ICFTU, the Government observed the following: (i) the ILO Declaration on Fundamental Principles and Rights at Work should be used only as a promotional framework, not as a double supervisory mechanism; (ii) efforts have been made in order to meet internationally accepted standards and to enhance cooperation with international organizations such as the ILO and the OECD; (iii) the labour laws have been revised in March 1997 in order to recognize the political activities of trade unions and multiple umbrella unions; and to repeal the provision banning third party intervention; (iv) trade unions have been established following the launch of the Tripartite Commission in 1998; (v) workers in the public service, workers in the private sector and workers in State enterprise have the right to collective bargaining and the right to strike; (vi) there are restrictions on the right to strike only for workers in certain essential services (military industry, electricity, water supply); (vii) workers in the EPZs enjoy the same rights as workers in other areas.</p> <p>In response to the KCTU, the Government observed the following: (i) the principle and right is recognized in Korea; (ii) the KCTU’s observations are not compatible with the basic principle of the Declaration on Fundamental Principles and Rights at Work and its Follow-up, which should</p> <p>2000 AR: In response to the ICFTU, the Government made the following observations: (i) ILO should reconsider its intention to reflect the ICFTU’s comments in the compilation of the annual report; (ii) the Korean Confederation of Trade Unions (KCTU) is legally recognized by the Government.; (ii) the KCTU’s observations are not compatible with the basic principle of the Declaration on Fundamental Principles and Rights at Work and its Follow-up, which should be strictly of promotional nature.</p>
TECHNICAL COOPERATION	Request	2008 AR: According to the Government: In the process of considering the ratification of the Conventions, the Republic of Korea needs advice/consultation from the ILO. When required, Korea plans to ask for advisory assistance from ILO.
	Offer	ILO; Organisation for Economic Co-operation and Development (OECD)

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) listed the Republic of Korea among the countries that has expressed for the past few years its intention to ratify Conventions Nos. 87 and/or 98 without materializing it. It therefore encouraged it to take the appropriate steps to do so. The IDEAs also noted that restrictions on the right to organise of certain categories of workers in the Republic of Korea (and some other countries), such as workers in the public service, were not compatible with the realization of this principle and right (Cf. Paragraphs 32 and 38 of the 2008 AR Introduction – ILO: GB.301/3).</p> <p>2007 AR: The DEAs listed the Republic of Korea among the countries that have been indicating their intention to ratify C.87 and C.98 for several years, with no indication that progress has been made. Furthermore, the IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize for workers in the public service (Cf. Paragraphs 33 and 37 of the 2007 AR Introduction – ILO: GB.298/3).</p> <p>2006 AR: The IDEAs observed the following: “A number of countries have provided information on new legislation, and we welcome among them the fact that the Republic of Korea has adopted special laws to allow public service trade unions to exercise the right to organize and collective bargaining” (Cf. Paragraph 37 of the 2005 AR Introduction – ILO: GB.295/5).</p> <p>2005 AR: The IDEAs listed the Republic of Korea among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification. They further indicated that the Office is following up on freedom on association and collective bargaining issues in the Republic of Korea. In this respect, the IDEAs noted with interest the information provided by the Republic of Korea and their countries in the Declaration follow-up (Cf. Paragraph 13 of the 2005 AR Introduction – ILO: GB.292/4).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



COUNTRY BASELINE UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: LAO PEOPLE'S DEMOCRATIC REPUBLIC

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , for the 2002 and 2005 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of the Lao National Chamber of Commerce and Industry (LNCCI) and the Lao Federation of Trade Union (LFTU) through consultations.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations of the LNCCI comprised of 23 affiliates. 2007 AR: Observations of the LNCCI 2006 AR: Observations of the LNCCI.	
	Workers' organizations	2009 AR: Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations of the LFTU. Observations by the ITUC. 2007 AR: Observations by the LFTU. Observations by the International Confederation of Free Trade Union (ICFTU). 2006 AR: Observations by the LFTU. 2005 AR: Observations by the International Confederation of Free Trade Union (ICFTU). 2003 AR: Observations by the LFTU. 2002 AR: Observations by the LFTU. 2001 AR: Observations by the International Confederation of Free Trade Union (ICFTU).	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification	The Lao People's Democratic Republic has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>YES, since 2002, for C.87 and C.98.</p> <p>2009 AR: The Government indicated that it was planning to adopt new laws in support of the ratification of C.87 and C.98.</p> <p>2008 AR: The Government confirmed its intention to ratify C.87 and C.98. <i>The LNCCI and the LFTU expressed their support to the ratification of C.87 and C. 98 and indicated that a tripartite consultation would accelerate the process.</i></p> <p>2007 AR: According to the Government: the possibility of ratification of C.87 and 98 is currently under examination. The LNCCI and the LFTU expressed their support to the ratification of C.87 et de la C.98 by Lao PDR.</p> <p>2006 AR: The Government confirmed its intention to ratify C.98 and C.98 in a near future. The LNCCI and the LFTU supported the ratification of all the fundamental conventions by Lao PDR, particularly C.87 and C.98.</p> <p>2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001); the Government intends to ratify C.87 and C.98.</p>	
Recognition of the principle and right (prospect(s), means of action, basic legal provisions)		Constitution	2006 AR: According to the Government: The principle and right (PR) are recognized by the 1991 Constitution and national labour laws that guarantees freedom of association and the right to collective bargaining.	
		Policy, legislation and/or regulations	<ul style="list-style-type: none"> Legislation: <p>Section 3 of the 1994 Labour Code guarantees the right and freedom of association (or affiliation to any group or social organization legally constituted) to workers and employers.</p> <p>2008 AR: A new Labour Code was adopted in 2006 with specific provisions on freedom of association for employers' and workers' organizations.</p> <p>2007 AR: The Government indicated that national labour norms were currently under review (including the fundamental norms of the ILO) in collaboration with the ILO, the LNCCI and the LFTU).</p>	
		Basic legal provisions	(i) 1991 Constitution; (ii) 1994 Labour Code (section 3).	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2002-2005 ARs: According to the Government: Prior government authorization is necessary to operate employers' organizations and conclude collective agreements. Any category of employer can organize.
			For Workers	2002-2005 ARs: According to the Government: Prior government authorization is necessary to operate workers' organizations and conclude collective agreements. Any category of worker can organize.
		Special attention to particular situations	2002-2005 ARs: According to the Government: women.	
		Information/ Data collection and dissemination	2002-2005 ARs: According to the Government: there is a lack of information and statistical data on the PR.	
		At international level	NIL	

	Monitoring, enforcement and sanctions mechanisms	2002-2005 ARs: According to the Government: The PR is realized through: (i) inspection and monitoring, (ii) special institutional mechanisms and; (iii) penal, civil and administrative sanctions.	
	Involvement of the social partners	2009 AR: According to the Government: Awareness-raising campaigns were organized together with trade unions to promote the ratification of C.87 and C.98. 2007 AR: The LNCCI and the LFTU indicated their participation in the upcoming national labour law review.	
	Promotional activities	2009 AR: According to the Government: Awareness-raising campaigns were organized together with trade unions to promote the ratification of C.87 and C.98. 2008 AR: The LNCCI indicated that regular meetings are organized with workers and bipartite consultations are also provided in cases of dispute. Moreover, several workshops have been organized by the LNCCI in collaboration with the ILO in Bangkok, the Government and workers' unions regarding the national labour law review in Lao PDR. 2006 AR: The LNCCI stated that it had initiated its activities in 2003 with the support of the ILO and the Australian Chamber of Commerce.	
	Special initiatives/Progress	2006 AR: According to the Government: a special initiative was initiated through several seminars on C.87, C.98 and the other fundamental conventions in collaboration with the ILO. According to the LNCCI: sensitization activities on the national legislation and international labour standards were undertaken for the members of the LNCCI.	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	2008 AR: The LNCCI indicated that the right to strike was still not recognized, that dispute settlements were not always straightforward and that employers' organizations were still very small and weak compared with workers' organizations.
		Workers' organizations	2009 AR: The ITUC reiterated the challenges it had raised under the previous AR (2008) concerning Lao PDR, in particular as regards: (i) strict legal limitations concerning the right to strike or to call for a strike in a wide number of situations; (ii) broad restrictions exist on the removal of union leaders under section 31 of the 2007 Trade Union Law (prior consent of the leaders at the higher level of the union); (iii) under section 20 of the same Law, only Lao citizens aged from 18 are allowed to join unions; (iv) the LFTU operates as labour front for the ruling party (the Lao People's Revolutionary Party-LPRP); (v) no effective collective bargaining exists as under the 2006 Labour Law and the 2007 Trade Union Law, there is legal authority for unions to bargain, but there is no requirement to compel employers to negotiate; and (vi) there is lack of law enforcement in the country. 2008 AR: The LFTU indicated the lack of education on the PR amongst the workers. According to the ITUC: (i) under the 1994 Labour Law, workers and employers have the right to organize but any labour union must be affiliated with the government sanctioned LFTU, which is controlled by the single political party (LPRP); (ii) civil servants are excluded from the 1994 Labour Law; (iii) severe limitations on bargaining and strikes (restriction within the Penal Code); (iv) lack of law enforcement. 2007 AR: The LFTU pointed out the following challenges: (i) some observers (NGOs and diplomatic personnel) mentioned that the law was not respected; (ii) conflict resolution mechanisms are not efficient. 2002-2005 ARs: According to the LFTU: the main challenges are the following: (i) the exclusive union is controlled by the only political party legally authorized; (ii) all the unions must be affiliated to the LFTU; (iii) the workers' organizations are not able to apply their own internal regulations; (iv) the right to strike is restricted through dissuasive sanctions; (v) labour inspection services and labour courts are not able to put in force national labour laws; (vi) the legal obligation of employers to bargain is lacking and (vii) freedom of association for civil servants is being prejudiced.

	According to the Government	<p>2009 AR: The Government indicated that the earlier challenges remained valid.</p> <p>2002-2005 ARs: According to the Government: the main difficulties in the Lao PDR are: (i) the practice in place regarding employment issues; (ii) the lack of capacity of government, employers' and workers' institutions and (iv) the absence of social dialogue.</p>
TECHNICAL COOPERATION	Request	<p>2009 AR: According to the Government: Financial support from donor agencies was needed. The ILO's cooperation would be needed after the ratification of C.87 and C.98.</p> <p>2008 AR: According to the Government: ILO technical assistance is needed for conducting a country assessment and seminars on the PR and the Declaration follow-up.</p> <p>The LNCCI requested ILO technical assistance for the capacity building of employers' organizations and supported the Government's view on the necessity of a country assessment.</p> <p>The LFTU requested ILO technical assistance for the capacity building of workers' organizations.</p> <p>2007 AR: The Government requested ILO technical assistance for the training of civil servants at the Ministry of Labour. It also required ILO technical cooperation on the labour law reform.</p> <p>The LNCCI requested ILO technical assistance for training on the fundamental conventions, particularly with respect to collective bargaining techniques.</p> <p>The LFTU requested ILO technical assistance for the training and capacity building of workers' organizations on the ILO fundamental Conventions.</p> <p>2006 AR: The Government called for ILO technical assistance for the realization of the PR and ILO fundamental conventions in Lao PDR.</p> <p>The LNCCI requested ILO support for the strengthening of sensitization activities on the national legislation and international labour standards.</p> <p>The LFTU requested ILO technical cooperation for the realization of the PR among the workers.</p>
	Offer	ILO; Australian Chamber of Commerce.
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) listed the Lao PDR among the countries that has expressed for the past few years its intention to ratify C. 87 and 98 without materializing it. Therefore, they encouraged the Government to take the appropriate steps to do so. They also welcomed efforts made by Lao PDR (New Labour Code) in implementing the principle and right. The IDEAs further acknowledged the high number of promotional activities concerning the realization of the PR in the Lao PDR (and some other countries), and encouraged the Office to maintain its support to these activities. However, they listed the Lao PDR among the countries where only one official trade union was allowed in practice and where unions are subject to government's interference or influence. In this regard, they recalled the following: "the right to official recognition is an essential aspect of the right to organize as it allows employers' and workers' organizations to be in a position to play their roles efficiently. Furthermore, any government intervention in employers' and workers' organizations' internal affairs (right to establish and join organizations of their own choosing, without distinction whatsoever and without previous authorization, right to draw up internal constitutions and rules, right to elect their representatives in full freedom, etc.) constitutes interference in the functioning of these organizations, which is a denial of the principle and right" (Cf. Paragraphs 31, 34, 35 and 36 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed the Lao PDR among the countries that had been indicating their intention to ratify C.87 and C.98 for several years, with no indication that progress had been made (Cf. Paragraph 33 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2004 AR: The IDEAS noted that Lao PDR was reporting on a irregular basis and recommended that the Office strengthen its assistance to countries, like the Lao PDR, that were not able to comply on a regular basis with their reporting obligations under the ILO Declaration Annual review (Cf. Paragraph 30 of the 2004 Annual Review Introduction – ILO: GB.289/4).</p> <p>2003 AR: The IDEAS noted that the Lao PDR had a chequered record in reporting under the ILO Declaration Annual Review (Cf. Paragraph 14 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p> <p>2001 AR: The IDEAS recommended that the Office initiate a dialogue with the Lao PDR and other countries that had never reported under the Declaration Annual Review Cf. Paragraph 30 of the 2001 Annual Review Introduction – ILO: GB.280/3/1).</p>	

GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL
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COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: LEBANON

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , since the start of the Annual Reviews (AR) in 2000.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of the most representative employers' organizations (Industrialist Association of Lebanon; Federation of Chamber of Commerce, Industry and Agriculture of Lebanon (FCCIAL)) and workers' organizations (General Confederation of Trade Unions for Lebanon (CGTL) through consultations and communication of government reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2003 AR: Observations by the FCCIAL.	
	Workers' organizations	2009 AR: Observations by the CGTL. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the ITUC. 2007 AR: Observations by the CGTL. Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the ICFTU. 2005 AR: Observations by the ICFTU. 2004 AR: Observations by the ICFTU. 2003 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Lebanon ratified in 1977 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>YES, since 2002, for C.87.</p> <p>2009 AR: According to the Government: The Government supports the ratification of C.87. While the work on adoption of the Labour Code is in progress, the Ministry of Labour that some of the considerations hindering the way to ratification will be dispelled. It also notes that C.87 was already applied in practice in the country.</p> <p>The CGTL stated that its support to the ratification of C.87, and supported the Government's indication that this Convention was being already being applied in Lebanon, but with the exception of the public sector.</p> <p>2008 AR: The Government indicated that it is currently preparing draft amendments to the staff regulations and to the Labour Code, which will include the promotion of the right to freedom of association (FA) in the public and private sectors. The ratification of Convention No. 87 relies therefore directly on the developments of those draft laws.</p> <p>2007 AR: According to the Government: There are still some discrepancies between the provisions of the draft amendments to the Labour Code and C.87. However, the Government is waiting for ILO comments on these amendments.</p> <p>2006 AR: In response to the ICFTU's observations, the Government indicated that it is interested in ratifying C.87 and has requested ILO technical assistance to review the draft Labour Code in the light of the provisions of this Convention.</p> <p>2002 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001): The Government intended to ratify C.87.</p>
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>YES</p> <p>The 1926 Constitution guarantees trade union freedom and the right to establish legal associations.</p>

		Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Policy <p>2005-2009 ARs: According to the Government: The draft amendment to the Lebanese Labour Code, prepared by a tripartite committee and some legal advisers, was not transmitted to the Civil Service Council but was rather referred to the Council of Ministers to follow its legal course. It is worth noting that the Ministry of Labour retrieved the draft amendment in order to re-examine it and incorporate the modifications to further harmonize its provisions with international labour Conventions ratified by Lebanon. The reviewed draft version was communicated to the ILO for information and comments. In response to a recent letter sent by the Ministry of Labour to the Civil Service Council, in order to inform us of any latest developments concerning the amendment of the staff regulations, the Civil Service Council indicated that no change has occurred, and that the work is still in progress to update the staff regulations.</p> <ul style="list-style-type: none"> • Legislation <p>2008 AR: According to the Government: The draft amendment to the Labour Code has been referred to the Council of Ministers to follow its legal process. The Ministry of Labour has subsequently retrieved the draft in order to reconsider it and to incorporate some modifications so that its provisions are compatible with international labour standards. These modifications were sent to the ILO for comments.</p> <p>2007 AR: According to the Government: A tripartite committee that was constituted of representatives of Ministry of Labour, Employers and Workers' organisations and some legal advisers prepared the draft amendments to the Labour Code. As for the Civil Service Council, it has prepared amendments to the staff regulations that contain recognition of the right to establish trade unions for employees in the public sector. These amendments then have been referred to the Prime Ministry to follow its legal course. The amended Labour Code deals with the principle and right (PR).</p> <p>2003 AR: The Draft Labour Code Amendment would allow public administration employees to enjoy freedom of association (FOA). It also includes a provision which would authorize certain categories of persons to enjoy the right to organize, while according to laws and regulations in force, such persons do not have that right.</p> <ul style="list-style-type: none"> • Regulations <p>Decree No. 17386 of 2 September 1964 and Legislative Decree No. 112 of 12 July 1959 relate to the PR.</p>	
		Basic legal provisions	(i) The Constitution; (ii) the Labour Code; (iii) the Code of Obligations and Contract; (iv) the Collective Agreement, Conciliation and Arbitration Act, which was enforced by Decree No. 17386 of 2 September 1964 (sections 2 and 6); and (v) Legislative Decree No. 112 of 12 July 1959.	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	<p>2009 AR: The Government confirmed that the Ministry of Labour examined the ILO's comments and that consultations on freedom of association were in progress between the parties concerned, especially employers' and workers' organizations.</p> <p>2007 AR: Concerning the requirement of prior authorisation to establish employers' organizations, the Government indicated that it was waiting for ILO comments on the draft amendments to the Labour Code.</p> <p>2006 AR: The Government indicated that the requirement of prior authorization to establish employers' or workers' organizations would be discussed with the ILO.</p> <p>2000 AR: All categories of employers can set up their organizations, but prior Government authorization is necessary to operate these organizations (section 86 of the Labour Code).</p>

			<i>For Workers</i>	<p>2009 AR: The ITUC reiterated most of the challenges concerning Lebanon it mentioned under the previous AR, in particular as concerns: (i) categories of workers that are excluded from the scope of the Labour Code; (ii) Government's interference in trade unions' creation and activities, including the legal possibility for administrative dissolution of trade unions; (iii) restrictions on the right to strike; and (iv) the denial of the right to join trade unions for Palestinians.</p> <p>2007 AR: Concerning the requirement of prior authorisation to establish workers' organizations, the Government indicated that it was waiting for ILO comments on the draft amendments to the Labour Code.</p> <p>2006 AR: According to the Government: the issue of the requirement of prior authorization to establish workers' organizations will be discussed with the ILO.</p> <p>2003-2006 ARs: Prior Government authorization is required to establish workers' organizations. Freedom of association can be exercised at enterprise, sector/industry/commercial, national and international levels by the following categories of workers: medical professionals; teachers; agricultural workers; workers engaged in domestic work; workers in export processing zones (EPZs) or enterprises/industries with EPZ status; migrant workers, who can join an occupational trade union under the general conditions laid down in the Labour Code; and workers in the informal economy. FOA and the right to collective bargaining can be exercised by workers in the public service with the exception of workers in public administrations, the judiciary and the military and security forces. It is necessary to be 18 years of age to join an occupational trade union.</p> <p>The Draft Labour Code contains provisions allowing civil servants in public administration, except judges and the military and security forces, to establish and join unions. The issue will be discussed within the framework of ILO technical assistance.</p>
			Special attention to particular situations	<p>2008 AR: According to the Government: a National Management Committee was created in May 2007 to deal with the situation of women migrant domestic workers. Its task is to prepare and implement projects aimed at protecting these workers in coordination with the relevant international organizations and the civil society committees. The following projects have been elaborated: (i) a handbook on rights and obligations; (ii) a consolidated labour contract; and (iii) a special law on women migrant domestic workers.</p> <p>2005-2007 ARs: According to the Government: Based on the provisions of the Labour Code, women have the same rights and obligations related to the right to organize, and that there is no discrimination between men and women in this matter.</p> <p>2003-2005 ARs: According to the Government: the Labour Code (section 50) grants immunity to members of the executive councils against any arbitrary dismissal.</p>
			Information and Data collection	<p>2008 AR: According to the Government: As at 12/07/2008, there were 174 employers' organizations and 399 trade unions located in Beirut- Mount Lebanon (132 employers' organizations and 218 trade unions), the North (18 employers' organizations and 62 trade unions), the South (13 employers' organizations and 71 trade unions); and Beqaa (11 employers' organizations and 48 trade unions). Moreover, one workers' general Confederation, 58 trade union federations and 9 employers' federations exist in the country.</p>

		At international level	According to the Government: No particular restrictions on the international affiliation of employers' and workers' organizations.
	Monitoring, enforcement and sanctions mechanisms	<p>2008 AR: According to the ITUC: The Ministry of Labour issued a Decree establishing a high-level national steering committee to amend the labour law with a view to reinforcing the rights of domestic workers. That committee will also draw up a standard contract for such workers and prepare a two-year action programme.</p> <p>2004-2005 ARs: According to the Government: There are inspection/monitoring mechanisms and capacity building of responsible Government officials. Legal reform and special institutional machinery are envisaged. In instances where the PR has not been respected, grievances can be submitted to the competent administrative unit at the Labour Ministry and to competent courts if no solution is found.</p>	
	Involvement of the social partners	<p>2009 AR: According to the Government: A tripartite committee has been set up to study the issue of ratification of C.87 and prepare the draft amendment to the Labour Code.</p> <p>2007 AR: According to the Government: The Ministry of Labour encourages tripartite social dialogue. In this respect, the results obtained were positive.</p> <p>2002-2006 ARs: Employers' and workers' organizations have participated in a tripartite committee to lay down a draft amendment to the Labour Code. In addition, they are members of numerous economic and social, as well as arbitration, bodies. Moreover, employers' and workers' organizations participate in tripartite seminars on various labour issues, arranged by the Ministry of Labour in cooperation with the ILO and the Arab Labour Organization.</p> <p>A tripartite commission was established by the Ministry of Labour in order to propose amendments to the Labour Code.</p>	
	Promotional activities	<p>2009 AR: According to the Government: The Ministry of Labour will soon organize two training courses ratified International Labour Conventions. Moreover, the Government encourages trade union activities, including publish studies that promote C.87. The CGTL indicated that it had organized together with the ILO a number of workshops on freedom of association.</p> <p>2008 AR: The Government indicated that the National Institute for Administration of the Ministry of Labour is preparing a training course for the staff of the Labour Inspection, Prevention and Safety Unit on all the ratified international labour Conventions. Other training courses will also be provided to the government commissioners in the Labour Arbitration Councils, through the Justice Institute of the Ministry of Justice.</p> <p>2007 AR: The Government indicated that the prevalent political conditions had not allowed the organization of the planned workshop on International Labour Standards, with special focus on freedom of association, in cooperation with the International Training Centre of the ILO-Turin. Therefore, this activity was postponed.</p> <p>2005 AR: According to the Government: Capacity building and awareness-raising activities have been implemented.</p>	

	Special initiatives	<p>2009 AR: According to the Government: The national steering committee is about to set a system for the migrant female domestic workers. This committee made much headway with establishing a standard work contract for the incoming male/female domestic workers and a directive guide for foreign female domestic workers in Lebanon.</p> <p>2008 AR: According to the ITUC: the Ministry of Labour issued a decree establishing a high-level national steering committee to amend the local labour law to take better account the rights of domestic workers. That committee will also draw up a standard contract for such workers and prepare a two-year action programme.</p> <p>2007 AR: According to the Government: The large number of workers' federations and unions in the country should be attributed to the following elements: (i) the well-known experience of a free trade union movement in Lebanon; (ii) the government's non-interference in trade unions' establishment and activities; and (iii) the legal protection of trade unions.</p> <p>2006 AR: The Government indicated that the Ministry of Labour had revived more than 60 trade unions the activities of which were interrupted.</p> <p>2004-2005 ARs: According to the Government: Successful examples in relation to FOA:</p> <ul style="list-style-type: none"> • All types of trade unions, at all levels, play a very important role in submitting and proposing social and economic laws, participating effectively in determining the economic policy in the country, and conducting negotiations and dialogue with employers on working conditions and terms and prevention of labour disputes. • Trade unions enjoy freedom of movement to defend their interests. • Workers' and employers' organizations participate in the committees established by the Ministry of Labour to prepare projects of a social nature. Many activities have been undertaken in this regard. 	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	NIL
		Workers' organizations	<p>2009 AR: According to the CGTL: C.87 is not applied in the public sector. Moreover, the multi-religion and multi-ethnic composition of Lebanese society is a challenge in the way to promote C.87. The ITUC reiterated its observations under the 2007–08 ARs concerning: (i) the broad government interference in trade union affairs; (ii) restrictions on freedom of association and the right to strike; and (iii) denial of freedom of association to Palestinian refugees.</p> <p>2007 and 2008 ARs: According to the ICFTU then ITUC: (i) the Government continues to interfere in trade unions' affairs; (ii) restriction of freedom of association for many categories of workers (Government employees, some categories of agricultural workers, domestic workers, day workers and temporary workers); limitation on strike rights; (iii) no protection against anti-union discrimination; (iv) migrant workers are not allowed to form trade unions; (v) Palestinians are denied many rights; and (vi) the right to organize demonstrations is limited by the obligation to establish the number of participants in advance and the requirement that five per cent of the union's members be assigned to maintain order.</p> <p>2006 AR: The ICFTU raised the following challenges: (i) there are restrictions on the right to organize for trade unions; (ii) the law does not adequately protect workers against anti-union discrimination although the draft Labour Code would resolve this issue; (iii) the Government has often interfered in trade union affairs; (iv) Palestinian refugees (11% of the population) are not allowed to form trade unions.</p> <p>2000-2006 ARs: ICFTU's observations: (i) Lebanon's Labour Code bans around 150,000 government employees from forming or joining trade unions; (ii) the Minister of Labour has wide powers under the law and must give prior authorization before a union can be formed; (iii) he must approve the results of all trade union elections; (iv) the law permits the administrative dissolution of trade unions and forbids them to engage in any political activity; (v) strike rights are legally restricted.</p>

	<p>According to the Government</p>	<p>2009 AR: According to the Government: The general situation in Lebanon perturbs the trade union situation, and affects it directly, as union members belong to segments of the Lebanese population. This situation is the most important challenge for the trade unions, and it cannot be separated from the political and economic life, in addition to the fact that trade unions are organized groups with overlapping objectives and interests. Concerning the ICFTU's and ITUC's comments under the 2007–08 ARs, the Government further mentioned the following: (i) the Government pays due attention to the trade unions matter and asserts and it is keen to ensure that trade unions work without any made-up obstacles (573 employers' and workers' organizations and 67 federations); (ii) the Government is currently studying the matter regarding trade union activity of government employees, as previously mentioned; (iii) as regards restrictions imposed on the right to organize of some categories of workers (agricultural workers, domestic workers', etc.), the draft Labour Code provides that the conditions of categories of workers excluded from its provisions are regulated by decree-laws emanating from the Council of Ministers (section 5) considering that despite this exclusion these categories of workers remain subject to the Code of Obligations and Contract; (iv) daily or temporary workers enjoy equal rights as for trade union activities, with no obstacles under them; and (v) foreign workers undertake trade union activities and have the right to join trade unions (sections 91 and 92 of the Labour Code). With respect to the ILO Declaration Expert-Advisers' (IDEAs) observations under the 2008 and the 2005 ARs, the Government indicated the following: (i) under the 2008 AR: The Government wishes to point out that it is currently reviewing the proposed amendments to the Labour Code, including freedom of association issues. Therefore, it has mandated a committee which was set up to review the draft amendments to the Labour Code, including those related to C.87. Lebanon has made much headway with realizing the right to organize, as many segments of those who attend to public matters have been given the opportunity to organize themselves, such as public teachers' associations, the association for graduates of the National Institute for Administration within the Civil Service Council, in addition to unions working effectively in public companies (water and electricity). It can be mentioned that realizing the right to organize is taking the right pace, and what is requested is making definite strides instead of hurrying with achieving that without any prior planning. The Government will notify the ILO of any new developments in due course. As has been indicated in the Government's report, trade unions and confederations are sustainably growing. Furthermore, what confirms Lebanon's conviction in freedom of association and the right to organize is the views expressed freely by trade unions without any censorship or interference, as can be seen in mass media; and (ii) under the 2005 AR: Efforts and progress that were being made in Lebanon to promote and realize the PR were slowed down by the general (political, economical and social) situation that prevailed in the country.</p> <p>2008 AR: In response to ITUC's observations, the Government indicated the following: (i) the authorization for the establishment of trade unions has never been an obstacle to their creation, which is proved by the existence of 568 associations of employers and workers and 60 trade unions and trade union federations. The Labour Code left it to each trade union to define the fields of its work by its Standing Orders set upon the agreement of two thirds of its legislative body; (ii) the role of the Ministry of Labour in the "context of trade union elections" is simply to supervise the election operations organized by a trade union, without the intervention of the Ministry neither in fixing the date of the election nor in appointing the candidates. It only takes note, and its supervision is to make sure that the election runs according to the Standing Orders of the trade union and in the presence of a polling committee including representatives of the trade union and the candidates as well as delegates from the Ministry of Labour. The Ministry has no role in the distribution of the posts, which is carried out by the elected board through a secret ballot not attended by the Ministry. Its ratification of this distribution is considered as a procedure to get informed of the names of the members and the tasks that they will assume according to this distribution; (iii) the Labour Code gives the Government the right to dissolve the executive board of a trade union in case this board does not respect the obligations it has according to the trade union's Standing Orders set originally by the general assembly and voted by a majority of two thirds of its members, or in case it carries out an action which does not fall under its terms of reference, provided that the election of a new board takes place in the three months following the date of the dissolution.</p>
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	<p>Thus, the Government's role is limited to the dissolution of the board in specific cases determined exclusively in the Labour Code (Section 105); moreover, the draft amendment to the Labour Code gives the general assembly of a trade union the right to dissolve the trade union upon a decision taken by a majority of two-thirds of its members; it also gives the competent courts the right to dissolve a trade union in case it does not respect the public order (section 155); consequently, the Government has no longer any role to play in the dissolution of trade unions; and (iv) the Lebanese Labour Code limits the purpose of trade unions to the issues that would protect, promote and scale-up occupations while defending their interests and promoting all their economic, industrial and commercial aspects. Thus, when the law forbids trade unions to engage in political activities or to participate in meetings and demonstrations of political nature, it intends to protect the interests of trade unions' members regardless of their political preferences and affiliations, and logically to preserve their trade-unionist unity. Finally, the draft amendment to the Labour Code aims to clarify that trade unions do not have any political capacity, and to forbid them from engaging in any political activity that would affect the national unity.</p> <p>2007 AR: According to the Government: Domestic workers are excluded from all provisions of the Labour Code.</p> <p>2006 AR: In response to the ILO Declaration Expert-Advisers' observations, the Government indicated that it was interested in ratifying C.87 and had sent the draft Labour Code to the ILO for review in the light of the provisions of C.87.</p> <p>Government's response on the ICFTU's observations: (i) The relations between the Ministry of Labour's competent units and labour organizations are based on cooperation and coordination and not on containment, pressure or force; (ii) the Lebanese Constitution upholds individual freedoms and places them under its protection, as does the Labour Code (sections 83, 89, 90, 92, 93, 94, 97, 99 and 106); (iii) Section 86 of the Labour Code provides that no employers' or workers' union may be established without prior authorization (license) from the Labour Ministry - this is meant to publicise the wish of the parties to establish a union; (iv) the administrative procedures set out for the creation of a union or federation are <i>per se</i> an element of legal protection to defend a union from the control of any authority, and provide adequate legal protection to workers; (v) the existence of more than 700 trade unions with several confederations in a country with a population of barely four million inhabitants is a clear evidence that freedom of association and the right to organize are allowed in the country and protected by law; (vi) the right to demonstrate and express one's opinion and the right to strike are freely allowed, while State authorities have protected demonstrators and such actions occur frequently in public in Lebanon; (vii) most trade unions take part in political activities; (viii) in order to ensure the human rights of Palestinians in Lebanon, the Minister of Labour has passed Decree No. 67 on 7/6/2005, which especially allows Palestinians to exercise on an equal footing all professions and activities authorized to Lebanese citizens.</p> <p>2000-2005 ARs: Government's response on the ICFTU's observations: (i) in the public sector, there is an association for graduates of the National Institute for Administration and there are teachers' associations at all levels of education (primary, secondary and tertiary). They conduct negotiations with administrations in order to safeguard their rights and protect the rights of their members; (ii) the mandate of the Ministry of Labour with respect to union activities is restricted to maintaining public order, protecting the public interest and assuring the sound and appropriate application of rules and regulations governing union activities; (iii) the Labour Code gives the Government the right to dissolve a union committee only if the union committee is in breach of the responsibilities assigned to it or acts outside the scope of its competence; (iv) the basic objective of a trade union is to defend the professional interests of its members and ensure progress in the economic, industrial and commercial spheres and in fact, members of a trade union, like all other citizens, do exercise their right to participate in political activity and to vote in all elections. A trade union, as a legal entity, is not entitled to engage in political activity in its capacity, given that political practice is an individual right.; (v) the right to strike is accorded to trade unions in all sectors; (vi) the draft amendment to the Labour Code provides for the right to establish and to join trade unions for servants and employees of public administrations, except for judges, the military and security forces; (vii) Prior authorization to establish a union is required because of the confused situation of unions due to the political, religious and economic situation. The issue of authorization will be discussed within the framework of ILO technical assistance. However, the issue of authorization has not been a barrier before the establishment of trade unions: in fact, there are in Lebanon 381 trade unions, 167 employers' organizations and 66 trade union federations.</p>
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TECHNICAL COOPERATION	Request	<p>2009 AR: According to the Government: The ILO's technical cooperation is needed in support of the PR in the country, with financial, material and educational means. The CGTL shared this view.</p> <p>2007 AR: According to the Government: ILO technical cooperation would be needed to finance the project of automation (mechanization) of trade unions and setting a geographical (localization) data basis in order to improve the continuous follow-up of trade union activity. According to the CGTL: There is a need for technical cooperation on workers' education.</p> <p>2006 AR: According to the Government: The requests for technical assistance are considered as one of the priorities of the Ministry of Labour but are to be discussed with the ILO.</p> <p>2005 AR: According to the Government: A need for technical cooperation to facilitate the realization of the PR in Lebanon exists in the following areas, in order of priority: (1) legal reform (labour law and other relevant legislation); (2) capacity building of responsible Government institutions; and (3) strengthening tripartite social dialogue. The Government hopes that these areas, which were defined in cooperation with the ILO, will be among the technical cooperation priorities that the ILO will help to implement.</p>
	Offer	ILO, and UNDP TOKTEN Project through Lebanese expatriates
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) encouraged Lebanon to complete its legal review process to remove the obstacles to the ratification of C.87. They acknowledged the high number of promotional activities concerning the realization of the PR in Lebanon (and some other countries), and encouraged the Office to maintain its support to these activities. However, the IDEAs listed Lebanon among the countries where some unions are subject to government's interference or influence, and recalled in this regard the following: (...) the right to official recognition is an essential aspect of the right to organize as it allows employers' and workers' organizations to be in a position to play their roles efficiently. Furthermore, any government intervention in employers' and workers' organizations' internal affairs (right to establish and join organizations of their own choosing, without distinction whatsoever and without previous authorization, right to draw up internal constitutions and rules, right to elect their representatives in full freedom, etc.) constitutes interference in the functioning of these organizations, which is a denial of the principle and right". Finally, the IDEAs noted that restrictions on the right to organise of certain categories of workers in Lebanon (and some other countries), such as migrant workers, domestic workers and workers in the public service, were not compatible with the realization of this principle and right (Cf. Paragraphs 32, 35, 36 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize for migrant workers and domestic workers and workers in the public service (Cf. Paragraph 37 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2006 AR: The IDEAs listed Lebanon among the countries where government authorization was required to establish employers' or workers' organizations and indicated that such restrictions would clearly deny the full potential of the principle of freedom of association (Cf. Paragraph 36 of the 2006 Annual Review Introduction – ILO: GB.295/5).</p> <p>2005 AR: The IDEAs listed Lebanon among the countries where some efforts were being made in terms of research, advocacy activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and /or ratification. However, they also mentioned that Lebanon was among the countries where important initiatives were started and where progress had slowed down (Cf. Paragraphs 13 and 147 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2003 AR: The IDEAs were encouraged to see the Government of Lebanon pointing out the needs in this country to strengthen the capacity building of workers' and employers' organizations and that it turned to the ILO for help (Cf. Paragraph 73 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: MALAYSIA

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, since the start of the Annual Review (AR) in 2000 but no change report for the 2007 and 2008 ARs.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Malaysian Employers Federation (MEF) and Malaysian Trades Union Congress (MTUC) through communication of government reports and tripartite meetings on reporting issues.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by the MEF. 2007 AR: Observations by the MEF.	
	Workers' organizations	2009 AR: Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the MTUC. Observations by the ITUC. 2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the ICFTU. 2005 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Malaysia ratified in 1961 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87).
		Ratification intention	NIL 2009 AR: The MEF stated it was not against the ratification of C.87.
	Recognition of the principle and right (prospect(s), means of	Constitution	YES The Constitution (article 10(1)(c)) provides for freedom of assembly and association.

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

	action, basic legal provisions)	Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Legislation 2000-2006 ARs: The Trade Unions Act, 1959 and the Industrial Relations Act, 1967 recognize the principle and right (PR) but impose some restrictions on joining and forming trade unions and on the right to collective bargaining. • Regulations The Trade Unions Notification 1981 deals with the PR. 	
		Basic legal provisions	(i) The Trade Unions Act, 1959; (ii) the Industrial Relations Act, 1967; (iii) the Employment Act, 1955; and (iv) the Act and Trade Unions Notification 1981, section 27.	
		Judicial decisions	AR 2008: In response to the ITUC comments, the Government referred to the High Court decision on the issues raised by the National Union of Bank Employees (NUBE) on the registration of AmBank (M) Bhd. According to the Government this decision is now the subject of further appeal to the Appellate Court, and any comments made would be subjudice.	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2002-2006 ARs: All categories of employers can set up their organizations, but prior Government authorization is necessary to operate these organizations.
			For Workers	2000-2006 ARs: Freedom of association can be exercised by medical professionals, teachers, agricultural workers, workers engaged in domestic work, workers in export processing zones (EPZs) or enterprises/industries with EPZ status, and migrant workers. However, prior Government authorization is necessary to operate workers' organizations (compulsory registration under the Trade Unions Act 1959 and recognition for collective bargaining under the Industrial Relations Act of 1967 and its subsequent amendments). Freedom of association (FOA) cannot be exercised by workers in the informal economy, members of the Royal Malaysian Police; members of any prison service; members of the armed forces; public officers engaged in confidential or security capacity; public officers holding any post in the managerial and professional group; and officers prohibited by any other law from joining a trade union, except those exempted by the Chief Secretary to the Government.
			Special attention to particular situations	NIL
			Information/ Data collection and dissemination	2008 AR: According to the ITUC: only 8.5% of the total workforce is unionised. 2002 AR: The Government provided information and data that show a decrease of registered collective agreements under the 2002 Annual Review regarding number of trade unions and memberships by sectors, number of collective agreements, claims for union recognition, etc.
		At international level	According to the Government: There are no particular restrictions on the international affiliation of employers' and workers' organizations. However, a trade union must have an approval from the Director General of Trade Unions before it can affiliate internationally.	

	Monitoring, enforcement and sanctions mechanisms	<p>2000-2006 ARs: According to the Government: The registration of a trade union is provided for under the Trade Unions Act, 1959. Every application for registration of any trade unions must be in compliance with this law and shall be made to the Director-General of Trade Unions (DGTU) for registration in the prescribed form, and shall be signed by at least seven members of the union in order to ensure an orderly development of trade unions in this country, under the Trade Unions Act, 1959. The DGTU can also cancel or suspend the registration of a trade union under certain conditions (Trade Unions Act, 1959).</p> <p>Machinery appropriate to national conditions has been established in the public sector for purposes of discussing and to some extent negotiating terms and conditions of employment.</p>	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Monitoring, enforcement and sanctions mechanisms	<p>2000-2006 ARs: The PR is enforced through law, collective agreements, free dispute settlement procedures and tripartite consultations at all levels. The Minister of Labour has the power to order recognition to be granted by the employer if the union claiming recognition is found competent and/or represents the majority of the workmen concerned.</p> <p>According to the Government: In instances where the PR has not been respected in the public sector, discussions and to some extent negotiations are held by the officers of National Joint Councils, the Congress of Unions of Employees in the Public and Civil Service (CUEPACS) and the Public Services Department. These discussions and negotiations are related to terms and conditions of employment, including remuneration and to issues affecting employees in the public service, including the statutory bodies and local authorities. Furthermore, in the private sector, the issue of complaints relating to anti-union practices by employers, including dismissal, is addressed by the Director-General of Industrial Relations (DGIR) or by the Industrial Court when the DGIR fails to resolve the complaint.</p>	
	Involvement of the social partners	<p>2004 AR: According to the Government: From May to April 2008, the Government explained to the employers' and workers' organizations the new amendments regarding the PR in Malaysia. Tripartite meetings were also held to get suggestions to improve the industrial relations system in the country.</p> <p>2000-2006 ARs: According to the Government: Employers' and workers' organizations have been involved in regular consultations in respect of their terms and conditions of employment, including remuneration.</p>	
	Promotional activities	<p>2004 AR: According to the Government: From May to April 2008, the Government explained to the employers' and workers' organizations the new amendments regarding the PR in Malaysia. Tripartite meetings were also held to get suggestions to improve the industrial relations system in the country.</p>	
	Special initiatives/Progress	<p>2004 AR: According to the Government: Successful example: The number of collective agreements voluntarily concluded on an annual basis and for a minimum duration of three years.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2009 AR: The MEF indicated that the security situation in the country had politicized the labour issues.</p> <p>2007 AR: According to the MEF: Employers abide by the laws and guidelines issued by the authorities in dealing with recognition claims by unions. It is never the intention of an employer to prolong or delay the process of a recognition claim. Such a procedure may involve referring the issues to the civil court, which may take longer to be decided. Referring the issue to the court for decision is a right, which may be exercised by the unions or the employers, and it should not be seen as anti-union tactics when the employer takes matter to the court.</p> <p>In fact the number of trade unions inclusive of employers' organizations increased by 569 in 2005. The membership in to the trade unions increased from 734,455 to 801,604 between 2001 and 2005.</p>

		<p>Workers' organizations</p> <p>2009 AR: The ITUC added the following challenges: (i) employees working for the defence sector, police force or prisons do not have the right to form or join trade unions; (ii) the Malaysian Penal Code requires police permission for public gatherings of more than five people.</p> <p>2008 AR: The MTUC indicated that the multinational corporations "set up shop" in Malaysia in 1974 and workers have been without a national union since then. Therefore, the Government must grant it as soon as possible. According to the ITUC: (i) the 30 year ban on the formation of a independent industrial union in the electronics industry is still in force; (ii) slow and cumbersome recognition process of the trade unions due to extensive power of the DGTU; (iii) restrictions on union formation and wide discretion in de-registering unions; (iv) restrictions on union officers; (v) prohibition of industrial union from organizing in managerial, executive positions and security-related tasks; (vi) requirement of union to receive recognition from employer prior to organizing; (vii) restrictions on the right to strike; (viii) trade unions are not permitted to use their assets for political purposes; (ix) in the private sector, the Industrial Relations Act (IRA) excludes hiring and firing, transfer and promotion, dismissal and reinstatement from the scope of collective bargaining and the IRA also limits collective bargaining in "pioneer" companies; (ix) in the public sector, the joint council system limits public sector unions to a consultative role and they do not have the right to take their disputes to the industrial court without the specific permission of the King of Malaysia; (x) threat of the Internal Security Act (ISA); (xi) the Malaysian Trades Union Congress is not recognized as a trade union confederation in law and does not therefore have the right to conclude collective bargaining agreements nor undertake industrial action; (xii) arbitrary refusal of union recognition; (xiii) inefficient labour courts; (xiv) migrants workers are not allowed to join associations; (xv) police intimidation.</p> <p>2006-2007 ARs: The ICFTU raised the following additional challenges: (i) no measures have been taken to speed up union recognition, despite previous promises, and the Government remained opposed to ratifying Convention No. 87; (ii) trade unions whose registration has been denied or withdrawn are considered as illegal associations; (iii) the Trade Unions Act establishes restrictions regarding the scope of a union's membership, its size and who may qualify as a candidate to become a trade union official; (iv) restrictions on the right to form trade unions in the public sector; (v) the right to strike is not specifically recognised and is restricted; (vi) the Government has threatened to invoke the 1960 Internal Security Act to prevent unions from undertaking protest action; (vii) only about 8.5 per cent of the total workforce is unionised; (viii) lack of independence of trade unions; (ix) slow union recognition by employers, (x) employers impose extra restrictions; (xi) the Government has failed to apply sanctions against employers who have violated directives granting trade union recognition or who have refused to reinstate illegally dismissed workers; (xii) migrants workers are not allowed to join associations; and (xiii) the labour courts are inefficient.</p> <p>2000-2005 ARs: The ICFTU raised the following challenges: (i) slow and cumbersome recognition process of the trade unions; (ii) denial of union recognition by many employers, including some multinational corporations; (iii) prohibition of general unions or mergers unions to most workers who can only form in-house unions as exemplified in the case of women workers employed by multinational electronics companies who have been denied the right to organize a national union in the electronics industry since the early 1970; (iv) persisting political and legal obstacles to the organizing of trade unions; (v) extensive power of the DGTU (supervision, inspection, approval or withdrawal of registration, etc.); (vi) the serious obstacle to trade union organizing activities resulting in the establishment of often very risky and time consuming in-house unions by workers disqualified from union membership; (vii) hostility and threats of dismissal affecting workers forming in-house unions; (viii) legal and legislative restrictions and regulations on trade unions rights and activities, including the right to strike; (ix) police intimidation; (x) restrictions on joining trade unions for certain categories of workers including migrant workers; (xi) compulsory arbitration for parties involved in a dispute; (xii) weakness of the conciliation machinery; (xiii) inefficiency of the industrial court; (xiv) employees' demand for higher wages and a guaranteed minimum wage in their companies.</p>
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<p>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>According to the Government</p>	<p>2009 AR: In response to the ITUC's observations, the Government indicated the following: (i) the Government had a series of discussions with both the trade unions and the employers (a list of these meetings was communicated in the Government's report to the ILO) before it tabled the amendments in Parliament, and the cry that MTUC was shocked is unfounded; (ii) the Government's call is to reduce red tape and help speedup process in dealing with its stakeholders. Thus, the delegation of the Director-General of Trade Unions' (DGTU)' power is needed to help speed the process, and only certain powers are vested on local officials. Personal powers of the DGTU are still held by him. Moreover, this provision is to clearly spell out what is in practice; (iii) the law only prohibits employees in managerial and executive positions from joining unions where they are not majority. Therefore, the law allows them to form unions for themselves; (iv) the IRA has no provisions limiting foreign workers from being covered by trade unions (Cf. Chong Wah Plastics Sdn. Bhd, & Ors v Idris Ali & Ors. [2001] 1 ILR 598; (v) the right to strike is enshrined in section 43 of the IRA. The restrictions imposed as claimed by the ITUC are only procedural in nature whereby unions will need to follow these procedures if they intend to strike. The Government believes that strike should be the last resort and this gives time to the Industrial Relations Department to play its role in trying to resolve the dispute. These procedures are a necessity. In the event the strike is conducted illegally, that is not following the procedures, then the members who go on an illegal strike may be prosecuted. This is also done in many countries where the procedures are in place and with tougher penalties. However, in Malaysia, two strikes were recorded in 2007 and two others in 2008, without any prosecutions; (vi) the principal amendment to the Industrial Relations Act 1967 was to reduce the time taken for processing a claim for recognition, Under the amendment, if an employer fails to respond within 21 days, the union has 14 days to inform the Industrial Relations Department, which will then proceed to conduct a secret ballot to ascertain membership (simple majority) and at the same time request for the competency check with the DGTU. Once both decisions are available, the Minister will make a decision; and (vii) the amendment has also taken into account the problem of inefficient labour courts by introducing powers of investigation to the Industrial Relations Department. This will help resolve this problem.</p> <p>2008 AR: In a late response to the ICFTU's observations, the Government stated that it has not ratified C.87, but nevertheless continues to strive towards the principles embodied in the Convention, and has assimilated the spirit of this instrument in the national laws, with several modifications to allow the continuous development and growth of the Malaysian economy. The Government further indicated the following: (i) the power of the DGTU on union formation and de-registration are meant to enable him to have a general supervision, discretion and control over relevant matters pertaining to trade unions. The same principle applies to de-registration — these powers are not absolute as the DGTU will only cancel the registration of a trade union if he is satisfied that a particular trade union has contravened the Trade Unions Act 1959 (Act 262), Trade Unions Regulations or the respective trade union's rules and regulations; (ii) As a matter of fact, It Is not uncommon that the Director General's decision has often been the Subject of judicial review by the High Court. Thus, the Director General walks the track cautiously; (iii) Contrary to ITUC's comments, the Director General does not have wide discretion in de-registering trade unions under the Trade Unions Act 1959. It has to confine itself to the limits of powers conferred by the Act; (iv) the Malaysian Government considers it necessary to impose conditions, restrictions and regulations on the birth and growth of trade unions in the country (in order: (a) to ensure that trade unions operate in a healthy, democratic and responsible way and that do not pose any threat to the security of the country; (b) to prevent the existence of multiple trade unions within any particular establishment, trade, occupation and industry which would trigger inter trade union rivalry; and (c) to ensure that in the exercise of trade union's rights, the interests of the people and the country as a whole are not sacrificed for the benefits of individuals who controls the unions); (iv) with regards to the Minister's power to suspend a trade union, the power can only be exercised with the concurrence of the Minister of Internal Security (the sale purpose of having this provision in the law is to protect public interest and maintain public order); (v) restrictions on unions officers (A non-citizen of Malaysia can stand for election to become an executive committee of a trade union provided that his trade union has obtained an order of exemption from the application of section 28 of Act 262 from the Minister. However, with regard to the provision of section 28 of Act 262 which limits membership in a trade union executive committee to persons who have worked for at least one year in the establishment, trade, occupation or industry with which the trade union is connected, this particular provision has been repealed in the recent amendment and has been passed by the Parliament. The restriction imposed by Act 262 on assuming trade union leadership are meant to ensure that trade union leaders are responsible people who can</p>
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protect not only the interest of the members of their respective unions but also the interest of the country and people at large); (vi) Ban from organizing (with the exception of public officers employed by the government or statutory authorities, workmen that come exclusively from either managerial, executive, confidential or security capacities are free to form unions that cater particularly for their own groups. Electronics sector workers were not totally precluded from forming trade unions. As a matter of policy, the government encourages the formation of enterprise or in-house unions for workmen in the electronics industry); (vii) Requirement of unions to receive recognition from employer (recognition is a pre-requisite for trade union to embark on collective bargaining process with the employer. Recognition is essential to ensure that the trade union is a competent union to represent the workers in that particular establishment); (viii) The Public Sector (public sector employees working for defence sector, police force or prisons do not have the right to form or join trade unions in order to ensure that the security and national interest of the country are well protected and preserved); (ix) Restrictions on the right to strike (a trade union is not denied its right to strike as long as stipulated procedures are observed. The requirement of two-third majority and a clear motion on the acts to be carried out during the strike are aimed to obtain majority support from union members concerned before proceeding on industrial actions to be taken against the employer. It aims to ensure democratic prevails in a trade union. It is to be noted that strikes are only prohibited when the dispute leading to the strike has been referred to the Industrial Court and the parties so informed and not anytime earlier in order not to disrupt the court proceedings. The imposition of certain notice requirement before strike is necessary to enable contingency actions to be taken. It does not in any way deny the right to strike. The right to strike under the Trade Union Act 1959 is a serious right and it was for this reason that the right to strike should be mandated by a not less than 2/3 majority from the union's eligible members. The right to strike should be a means to an end and not the end itself. As such, the Government has a strong position that the posture of strike or strike itself should not over spilled into a lose-lose situation. Conflict resolution mechanism should be allowed an opportunity to address and resolve the dispute, and if possible to create a win-win situation. It was for this reason that the cooling off period of seven days was incorporated into the Trade Unions Act 1959); (x) Restrictions on political activities by trade unions (the prohibition as provided under section 72 of Act 262 only refers to the use of unions fund for political objectives. An officer or individual union members are not prohibited from contributing to any political parties provided that the rules and regulations are observed. In the private sector: Industrial Relations Act 1967 (Act 177) merely states the rights of employers When negotiating collective agreements. These rights are not to exert limitation on collective bargaining. It provides for employers to run their business in the most efficient way and to protect from the abuse of collective bargaining process. These rights are not absolute as the matter can be brought up to the Department of Industrial Relations for conciliation process. In matters pertaining to procedures for promotion, parties are allowed to discuss it on a general character. In the public sector: The public sector employees through their unions have been holding regular discussions and consultations in respect of their terms and conditions of employment including remuneration. The Congress of Union of Employees in the Public and Civil Services (CUEPACS), the officers of the Joint Councils and the Public Services Department meet regularly to discuss issues affecting employees in the public service. Through these discussions, the public sector unions do contribute to the deliberations on remuneration and terms and conditions of employment); (xi) Application of Employment Act limited to Peninsular Malaysia (major amendments have been done in order to have uniformity in the application of the main labour legislation throughout Peninsular Malaysia, Sabah and Sarawak. Through this amendment, many provisions of the Sabah Labour Ordinance and Sarawak Labour Ordinance were repealed and the provisions from the Employment Act 1955 were incorporated into the Ordinances.); (xii) Government interference (the Government does not interfere in the administration of trade unions unless explicitly authorized by law); (xiii) Ban on general confederations (MTUC registration as a society instead of as being a general confederation of trade union is not the choice of the government. If MTUC wants itself to be registered as a federation of trade unions, its original sponsors should have opted for registration under the Trade Unions Act 1959 and comply with all the conditions laid down under the Act); (xiv) Arbitrary refusal of union recognition by Director General of Trade Unions (in a recognition claim under Section 9 of the Industrial Relations Act 1967, the DGTU does not arbitrarily decide on the competency question of whether a trade union could represent any workmen or class of workmen. The DGTU has to perform a statutory function and his powers were not absolute or arbitrary. It is often subjected to judicial review by the High Court. In *Marulee (M) Sdn Bhd v. Minister of Human Resources & Anor* (2007) 5 CLJ 51, the Court of Appeal observed and held that as far as the rule of natural justice in relation to the right to be heard was concerned, this rule had been strictly observed by the DGTU and the Director General of Industrial Relations is arriving at the conclusions that they did.);

(xv) Employers impose extra restrictions (Limitations on the right of workmen who are employed in managerial, executive, confidential or security capacities to join trade unions of workmen that do not cater exclusively for these groups, are to avoid possible cases of conflict of interest. Any questions arising from the differing interpretation on the above stated capacities could be best addressed by the DGTU or the courts.); (xvi) Inefficient labour courts (the Industrial Court is aware of some delays in the handing down of some of the awards by the court. However, with the implementation of the "electronic Industrial Court"(aIC), a computerized case management system for the whole country, the Industrial Court President has been monitoring closely cases being heard and awards handed down in the Court With the close supervision, it is expected that cases of awards not handed down for more than 12 months can soon be resolved.); (xvii) Migrant workers Intimidated to not join trade unions (existing provisions in the Trade Unions Act 1959 do not expressly qualify that trade unions membership should be confined to citizens of Malaysia. The right to unhindered membership in trade unions is protected under the Employment Act 1955 and the Industrial Relations Act 1967. Any grousers of misdemeanour on the part of employers should be reported directly to the relevant authorities for proper action.); and (xviii) Increasing anti-union activity: (MTUC claims that former officers of the Department of Trade Unions and the Department of Industrial Relations had been involved obtaining information from salving officers, on unions involved recognition claims and collective bargaining and then approaching employers with an offer to remove the union, and advice on how to prolong the settlement process is a general statement. As a matter of department's policy and ethics, all official information are confidential information and unauthorized people should not have access to such information.).

2007 AR: In response to the ICFTU's observations, the Government indicated the following: (i) under the Trade Unions Act 1959 and the Industrial Relations Act 1967, the formation and the activities of trade unions, laws and procedures are to be observed; (ii) to speed up union recognition the Government has taken steps to amend the Industrial Relations Act 1967 and the Trade Unions Act 1959; (iii) the powers conferred on the DGTU are meant to enable him to have the general supervision, direction and control of all matters relating to trade unions, and the DGTU only de-registers a trade union if a trade union has contravened the Trade Unions Act 1959, the Trade Unions Regulations or its own rules and regulations; (iv) the establishment of an industrial trade union by electronic workers is not encouraged. This policy is aimed at protecting the national interest as well as the interests of workers in the electronics industry. Trade unions may refer to the Minister of Human Resources for his decision on matters relating to the definition of employees in managerial, executive, confidential or security capacities and their eligibility to be union members. Disputes relating to the scope of representation of such workers by industrial unions, should they arise, will be dealt with under section 9(1A) of the Industrial Relations Act.

2006 AR: In response to the ICFTU's observations, the Government made the following comments: (i) in order to speed up union recognition, the Government has taken steps to amend the Industrial Relations Act, 1967 and the Trade Unions Act, 1959. The cause of delay is mainly due to legal proceedings against the decision of DGTU; (ii) the laws and procedures relating to the formation and activities of trade unions are meant to grant trade unions certain rights, immunities and liabilities as a legal entity and to protect the interests of workers; (iii) it is necessary to impose conditions, restrictions and regulations on the formation and growth of trade unions to prevent the multiplication of trade unions within a particular establishment, trade, occupation or industry so as to avoid unions rivalry; (iv) a trade union is not denied the right to strike as long as the stipulated procedures are observed; (v) the Industrial Relations Act, 1967, deals adequately with disputes relating to illegal dismissals; (vi) essential services have already been identified specifically in the Schedule to the Industrial Relations Act; (vii) the Internal Security Act has been effective and relevant in maintaining national security; (viii) workers are granted the right to form or join a trade union under the Federal Constitution as well as the Employment Act, 1955, the Trade Unions Act, 1959 and the Industrial Relations Act, 1967; (ix) the DGTU decides if a trade union is competent to represent workers or not; if not the workers may join a competent trade union or, in the absence of such a trade union, they may form an establishment-based trade union; (x) trade unions are allowed to form or join federation of trade unions under the Trade Unions Act, 1959; (xi) employees in managerial and executive positions, employees entrusted with confidential matters or employees performing security-related tasks are not to be organized by industrial unions, but are free to form or join a union of their own particular category of workers; (xii) non-compliance of Industrial Court awards by employers is dealt with in accordance with the provisions of the Industrial Relations Act; (xiii) under the Trade Unions Act, 1959, migrant workers may join a trade union as union members, but they are not to be elected as trade union officials; (xiv) section 8 of the Industrial Relations Act allows for complaints relating to anti-union practices by employers, including dismissals, to be lodged with the DGIR.

		<p>2004 AR: The Government identified the main difficulties encountered in Malaysia in realizing the PR as follows: (i) social values; (ii) cultural traditions; and (iii) social and economic circumstances.</p> <p>2000-2002 ARs: In response to the ICFTU's observations, the Government made the following comments: (i) the Federal Constitution and the labour laws provide for the right to form or join a trade union; (ii) the Minister has the power to order recognition to be granted by the employer concerned if the union claiming recognition is found competent and/or represents the majority of the workers concerned; (iii) some restrictions on basic trade union rights are necessary in order to preserve national interests; (iv) general trade unions are prohibited so as to avoid competition among trade unions; (v) the power of regulation conferred on the DGTU and the Minister of Human Resources (MHR) is meant to ensure that trade unions operate in compliance with national, peoples' and the workers' interests; (vi) trade unions can affiliate only with lawful and responsible international consultative bodies or similar bodies; (vii) the Government recognizes the important role of trade unionism and has supported its growth in a regularized manner and is concerned for the welfare and interest of workers. Furthermore, the main reason for the backlog was the economic crisis prevailing in Malaysia since late 1997. The Government has taken appropriate measures to address the issue of the backlog of cases.</p>
TECHNICAL COOPERATION	Request	2009 AR: The Government of Malaysia welcomed any expertise on the PR.
	Offer	NIL
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) were concerned that Malaysia (and another State) reported that it did not intend to ratify Convention No. 87. They also noted that restrictions on the right to organise of certain categories of workers in Malaysia (and some other countries), such as migrant workers and workers in the informal economy, were not compatible with the realization of this principle and right (Cf. Paragraphs 30 and 38 of the 2008 AR Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize for migrant workers. (Paragraph 37 of the 2007 AR Introduction). Furthermore, the IDEAs noted with concern that several countries had not yet expressed their intention to ratify and urged Malaysia to do so. (Paragraph 33 of the 2007 AR Introduction – ILO: GB.298/3).</p> <p>2006 AR: The IDEAs listed Malaysia among the countries where government authorization was required to establish employers' or workers' organizations and indicated that such restrictions would clearly deny the full potential of the principle of freedom of association (Cf. Paragraph 36 of the 2006 Annual Review Introduction – ILO: GB.295/5).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	



REFERENCIA POR PAIS DENTRO DEL MARCO DEL EXAMEN ANUAL DE LA DECLARACION DE LA OIT (2000-2009)¹: MEXICO

LIBERTAD SINDICAL Y DE ASOCIACION Y RECONOCIMIENTO EFECTIVO DEL DERECHO DE NEGOCIACION COLECTIVA (LSANC)

PRESENTACION DE MEMORIAS	Cumplimiento de las obligaciones gubernamentales	SI , desde el principio del Examen anual (EA) en 2000.	
	Cometido de las organizaciones de empleadores y trabajadores en la presentación de memorias	SI , el Gobierno señala que han transmitido copias de memorias gubernamentales a las organizaciones de empleadores, (Confederación de Cámaras Industriales de los Estados Unidos Mexicanos (CONCAMIN) y a la Confederación Patronal de la República Mexicana (COPARMEX) así como de trabajadores (Confederación de Trabajadores de México (CTM)).	
OBSERVACIONES DE LOS INTERLOCUTORES SOCIALES	Organizaciones de Empleadores	EA 2006: Observaciones de la CONCAMIN y de la COPARMEX. EA 2005: Observaciones de la CONCAMIN. EA 2002: Observaciones de la CONCAMIN. EA 2001: Observaciones de la CONCAMIN. Observaciones de la COPARMEX. EA 2000: Observaciones de la CONCAMIN.	
	Organizaciones de Trabajadores	EA 2006: Observaciones de la CTM. Observaciones de la Confederación Internacional de Organizaciones Sindicales Libres (CIOUSL). EA 2005: Observaciones de la CTM. Observaciones de la CIOUSL. EA 2002: Observaciones de la CTM. Observaciones de la CIOUSL. EA 2001: Observaciones de la CONCAMIN. Observaciones de la COPARMEX. EA 2000: Observaciones de la CONCAMIN.	
ESFUERZOS Y PROGRESOS DESPLEGADOS PARA REALIZAR EL PRINCIPIO	Ratificación	Estado de ratificaciones	México ratificó en 1950 el Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87). Sin embargo, no ha ratificado el Convenio sobre el derecho de sindicación y negociación colectiva, 1949 (núm. 98).

¹ Las referencias dentro del Examen anual de la Declaración de la OIT están basadas sobre los elementos siguientes en la medida en que estén disponibles: memorias de los Gobiernos dentro del Examen anual de la Declaración, observaciones de organizaciones de empleadores y trabajadores, estudios específicos con profundidad preparados sobre la patrocinación del país y de la OIT, y observaciones/recomendaciones de los Expertos Consejeros en la Declaración de la OIT y del Consejo de Administración.

Y DERECHO		Intención de ratificación	<p>Según el Gobierno hay actualmente una imposibilidad jurídica nacional de ratificar el C.98.</p> <p>EA 2006: Según el Gobierno: México no ha ratificado el Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98). De hecho, la Cámara de Senadores de la República decretó ratificar el mismo con una reserva por lo que se refiere al inciso b), apartado 2 del artículo 1 del Convenio. De esta manera, los mandatos establecidos en el artículo 123 de la Constitución y la Ley Federal del Trabajo tendrían precedencia por lo que se refiere a la libertad de asociación y la libertad sindical. Sin embargo, la OIT no ha admitido la ratificación de México, debido a que esta Organización no admite reservas. Sin embargo en el marco de la «Nueva Cultura Laboral», se trabaja en una reforma legislativa laboral que coadyuve a promover la capacitación, la participación y una remuneración de los trabajadores, mismo que culminó en un proyecto de reformas en la LFT que aborda el tema de libertad sindical y el reconocimiento efectivo del derecho a la negociación colectiva, mismo que se convirtió en iniciativa de ley el 12 de diciembre de 2002. En respuesta a los comentarios de la CIOSL, el Gobierno señala lo siguiente: i) en relación con la ratificación del C.98, a la fecha no ha habido ningún cambio sobre la reserva hecha por el senado de la república al inciso b), numeral 2 del artículo 1.º del convenio.</p> <p>EA 2003: El Gobierno señala que la Cámara de Senadores de la República decretó ratificar el mismo con una reserva por lo que se refiere al inciso b), apartado 2 del artículo 1 del Convenio. La OIT no ha aceptado esta ratificación ya que no se aceptan reservas.</p>
ESFUERZOS Y PROGRESOS DESPLEGADOS PARA REALIZAR EL PRINCIPIO Y DERECHO	Reconocimiento del principio y derecho (perspectiva(s), medios de acción, disposiciones jurídicas básicas)	Constitución	<p>SI.</p> <p>La Constitución Política de los Estados Unidos Mexicanos de 1917 (artículo 9) establece que no se podrá coartar el derecho de asociarse o reunirse pacíficamente con cualquier objeto lícito. El artículo 123 apartado A, fracción XVI del mismo ordenamiento, dispone que tanto los obreros como los empresarios tengan derecho para coaligarse en defensa de sus respectivos intereses, formando sindicatos, asociaciones profesionales, etc. Asimismo, el apartado B, fracción X del mencionado artículo, establece que los trabajadores tendrán el derecho de asociarse para la defensa de sus intereses comunes.</p>
		Política, legislación y/o reglamentación	<ul style="list-style-type: none"> Legislación <p>La Ley Federal del Trabajo (LFT), en sus artículos 441, 356, 357, 359 y 381, contempla disposiciones relativas al contrato colectivo de trabajo y al contrato-ley, dispuestos en los capítulos III y IV.</p> <p>La Ley Federal de los Trabajadores al Servicio del Estado (LFTSE), en su título cuarto establece disposiciones relativas a la organización colectiva de los trabajadores y a las condiciones de trabajo.</p> <p>El registro sindical es una garantía que le brinda a las organizaciones seguridad jurídica. La negociación colectiva se lleva a cabo en tres modalidades que se determinan según la práctica y entendimiento entre las organizaciones de los trabajadores y los empleadores o sus organizaciones. Los contratos colectivos no están sujetos a la autorización del Gobierno, las autoridades únicamente fungen como depositarias para registro de los documentos que los contienen.</p>
		Disposiciones jurídicas básicas	i) Ley Federal del Trabajo; y ii) Ley Federal de los Trabajadores al Servicio del Estado.
		Decisiones judiciales	Ninguna mención particular.

	Ejercicio del principio y derecho	En el nivel nacional (empresas, sectores/ industrias, nacional)	Para empleadores	EA 2003: Según el Gobierno: Todas las categorías de empleadores pueden ejercer el DNC, y no es necesario pedir la autorización/aprobación del Gobierno para celebrar convenios colectivos.
			Para trabajadores	EA 2003: Según el Gobierno: Pueden ejercer el DNC: i) todos los trabajadores de los servicios públicos; ii) los profesionales de la medicina; iii) el personal docente; iv) agricultores; v) los trabajadores que desempeñan trabajos a domicilio; vi) los trabajadores en las zonas francas (ZFI) o empresas/industrias con categoría ZFI; vii) todos los trabajadores. Además, no es necesario pedir la autorización/aprobación del Gobierno para celebrar convenios colectivos.
ESFUERZOS Y PROGRESOS DESPLEGADOS PARA REALIZAR EL PRINCIPIO Y DERECHO	Ejercicio del principio y derecho	En el nivel nacional (empresas, sectores/ industrias, nacional)	Tratamiento especial a determinadas situaciones	EA 2003: NO, según el Gobierno.
			Recopilación y divulgación de información y datos	<p>EA 2009: Según el Gobierno: En materia de libertad sindical del 1.º de enero al 26 de junio de 2008, se han registrado 4.591 emplazamientos a huelga, en empresas de jurisdicción federal, de los cuales únicamente han estallado 16. En materia de negociación colectiva del 1.º de enero al 26 de junio de 2008, se han llevado a cabo 3.570 revisiones salariales con 912.053 trabajadores y 4,40 por ciento de incremento salarial promedio, lo que equivale a una ganancia real de 0,14 por ciento al eliminar el efecto de la inflación del periodo. Del mes de enero al mes de mayo de 2008, se han depositado en la Junta Federal de Conciliación y Arbitraje, 2.773 contratos colectivos de trabajo, 114 reglamentos interiores, y 2.534 convenios colectivos, haciendo un total de 5.129 documentos en depósito recibidos en el primer semestre del año.</p> <p>EA 2007: Según el Gobierno: Dentro de la negociación sindical del período de julio de 2005 a mayo de 2006, se han registrado 6.832 emplazamientos de huelga, de las cuales únicamente 42 se han convertido en huelgas estalladas, 10 que representa un índice de entallamiento de huelgas de un 0,4 por ciento. Por medio del diálogo y la conciliación se han celebrado 5.415 revisiones salariales y contractuales en el mismo período, resultando beneficiados 1.687.065 trabajadores.</p> <p>EAs 2000-2006: Las autoridades administrativas han publicitado y enviado a la OIT diversas informaciones y cuadros estadísticos sobre contratos y convenios colectivos. La CTM comunicó también a la OIT información y datos sobre contratos negociados con los empleadores.</p>
		En el nivel internacional	Ninguna mención particular	

	<p>Mecanismos de supervisión, aplicación y sanción</p>	<p>EA 2003: Según el Gobierno: Se han establecido tres instancias a nivel federal y local: 1) Inspección del Trabajo (artículo 541 de la LFT) para verificar el cumplimiento de las normas de trabajo; 2) La Procuraduría de la Defensa del Trabajo: su objeto es proponer a las partes interesadas (trabajadores y patrones) soluciones amistosas para el arreglo de sus conflictos y hacer constar los resultados en actas autorizadas (artículo 530 de la LFT); 3) Juntas de Conciliación y Arbitraje: se encargan de conocer y resolver los conflictos de trabajo que se susciten entre trabajadores y patrones, sólo entre aquellos o sólo entre éstos, derivados de las relaciones de trabajo o de hechos íntimamente relacionados con ellas (artículos 601 y 604 de la LFT).</p> <p>EAs 2000 y 2003: Según el Gobierno: La negociación colectiva se lleva a cabo en tres modalidades que se determinan según la práctica y entendimiento entre las organizaciones de los trabajadores y los empleadores o sus organizaciones: i) la primera modalidad consiste en una negociación voluntaria entre las partes, quienes previa negociación, sólo se concretan a depositar el contrato colectivo ante la autoridad competente; ii) la segunda modalidad, o sea la negociación administrativa consiste en que una de las partes o ambas solicitan a la autoridad laboral la conciliación, previo emplazamiento a la huelga en caso de no llegar a un acuerdo entre las organizaciones. En estos casos la autoridad laboral orienta a ambas partes, y, en algunos otros, sólo participa como testigo en la celebración de sus convenios que se expresan en contratos colectivos y que a su vez deben depositarse ante la autoridad competente; iii) en la tercera modalidad, los sindicatos acuden directamente a la vía jurisdiccional ante las Juntas de Conciliación y Arbitraje (federal o locales) competentes para llegar al entendimiento entre las partes durante el período conciliatorio del proceso laboral.</p>
	<p>Cometido de los interlocutores sociales</p>	<p>EA 2007: Según el Gobierno: El Consejo para el Diálogo con los Sectores Productivos ha sido una plataforma eficaz en la que los sindicatos, los organismos empresariales y los académicos más representativos intercambian reflexiones y propuestas sobre las políticas que impulsa el Gobierno Federal en la agenda económica. Se ha institucionalizado el diálogo social como un elemento central de visión nacional. En México se permite el pleno ejercicio de los derechos laborales y la libertad sindical sin que exista discrecionalidad en el registro de los sindicatos mediante el respeto a la libre contratación colectiva un compromiso sindical con la capacitación, la participación, la productividad y la competitividad de las empresas, así como con el mejoramiento del nivel de vida de los trabajadores.</p> <p>EAs 2003-2006: Según el Gobierno: Se creó el Consejo para el Diálogo con los Sectores Productivos en 2001, Consejo en el cual se encuentran representantes de los sectores, obrero, campesino, patronal y público. El propósito de este Consejo es mantener un diálogo permanente de participación y colaboración para ventilar los programas generados por las nuevas condiciones nacionales e internacionales en materia laboral.</p>

	<p>Actividades de promoción</p>	<p>EA 2009: Según el Gobierno: A partir del 1.º de enero de 2008, cualquier persona puede consultar directamente en el portal de Internet de la Secretaría del Trabajo y Previsión Social (www.stps.gob.mx), toda la información relativa al contenido de los contratos colectivos, reglamentos Interiores de trabajo y convenios que están vigentes, así como comités ejecutivos y Estatutos de aquellos sindicatos, federaciones y confederaciones que han sido registrados ante la misma Secretaría. Esta transparencia y este acceso a la información pública contribuyen al respeto del principio y derecho (PYD). Asimismo, el Gobierno ha transmitido a las principales agrupaciones sindicales, organismos del sector industrial, comercial y demás gremios vinculados al sector laboral, el compromiso y la importancia que tiene con el diálogo social para contribuir a fortalecer el equilibrio entre los factores de la producción que permitan un ambiente de paz laboral.</p> <p>EA 2008: Según el Gobierno: Mediante el diálogo permanente con los factores de la producción, la presente Administración ha convenido en la formulación de agendas específicas de trabajo con las principales agrupaciones sindicales, organismos del sector industrial, comercial y demás gremios vinculados al sector laboral. Se han creado veintidós mesas para la atención conjunta de los temas de interés entre el Gobierno Federal y los grupos sindicales y de empleadores, entre los que se encuentran las mesas con la Confederación Revolucionaria de Obreros y Campesinos (CROC), el Congreso del Trabajo (CT), la Unión Nacional de Trabajadores (UNT), la Confederación Patronal de la República Mexicana (COPARMEX), la Confederación Nacional de Cámaras Industriales (CONCAMIN) y la Cámara Nacional de la Industria de la Transformación (CANACINTRA). Asimismo, en coordinación con las Secretarías de Economía, de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación y Desarrollo Social, se mantiene una Mesa de Diálogo como instancia central de acuerdos para la atención de los planteamientos de diversas organizaciones sindicales. Adicionalmente, con el objeto de revisar los contratos-ley vigentes e impulsar las relaciones entre los factores de la producción basadas en la productividad, la competitividad y la capacitación del trabajo en las industrias del azúcar y del hule, en la Secretaría del Trabajo y Previsión Social se han establecido comisiones de trabajo con representantes de las empresas y de los sindicatos. Algunos de los temas a tratar en estas comisiones se refieren a: escalafón ciego, multihabilidades y/o multifuncionalidad, simplificación de tabuladores salariales, campo de aplicación de los contratos, jornadas de trabajo, prestaciones médicas, eliminación de cláusulas obsoletas, prevención de enfermedades, modernización del equipo industrial, así como ahorros de las empresas en combustibles, electricidad y agua.</p> <p>EA 2007: Según la CONCAMIN y la COPARMEX: La ley nacional cubre la negociación colectiva, y hay una práctica de contratos colectivos en México.</p> <p>EAs 2003-2006: Según el Gobierno: i) Un diálogo permanente se mantiene a través del Consejo para el Diálogo con los sectores productivos. Además, la Secretaría del Trabajo y Previsión Social promueve la utilización del diálogo social como herramienta para alcanzar acuerdos en materia de negociaciones colectivas donde el Gobierno interviene únicamente como mediador, logrando con ello una nueva relación entre trabajadores, empresarios y gobierno.</p>
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ESFUERZOS Y PROGRESOS DESPLEGADOS PARA REALIZAR EL PRINCIPIO Y DERECHO	Iniciativas especiales/Progreso	<p>EA 2007: Según el Gobierno: El Gobierno Federal, por conducto de la Secretaría del Trabajo y Previsión Social, impulsa y facilita el diálogo obrero empresarial hacia una «Nueva Cultura Laboral» que constituye un verdadero diálogo social entre fuerzas productivas. Propiciando la libertad de negociación de los contratos colectivos entre las partes, de acuerdo con las condiciones específicas de cada empresa, la libre negociación sindical se demuestra con el reconocimiento de los sindicatos y las organizaciones empresariales como actores en la formación de consensos sociales.</p> <p>EAs 2003-2006: Según el Gobierno: Con respecto a las iniciativas emprendidas en el país que se pueden considerar como logros en relación con este principio, y como se señaló en la memoria de 2002, en el marco de la «Nueva Cultura Laboral» del Gobierno se trabaja en una reforma legislativa laboral que coadyuve a promover la capacitación, la participación y una justa remuneración de los trabajadores.</p> <p>Para ello, se creó la Mesa Central de Decisión para la Reforma de la Ley Federal del Trabajo, en la que las organizaciones de trabajadores y empleadores de México, teniendo al Gobierno como facilitador, lograron culminar un proyecto de reformas a la Ley Federal del Trabajo que aborda el tema de la libertad sindical y el reconocimiento efectivo del derecho a la negociación colectiva.</p>	
PROBLEMAS PARA REALIZAR EL PRINCIPIO Y DERECHO	Según los interlocutores sociales	Organizaciones de empleadores	<p>EA 2000: Según la CONCAMIN: El derecho de negociación colectiva (DNC) está reconocido en México y no se requiere ninguna autorización/aprobación del Gobierno para concertar convenios colectivos. Sin embargo, los trabajadores de la economía informal no pueden ejercer este derecho. Asimismo, en el caso de los servidores públicos, las «condiciones generales de trabajo» se definen en el instrumento que fija las relaciones contractuales con la administración pública y las posibilidades de mejora de los mismos se vinculan necesariamente con el presupuesto de egresos trianual.</p>
		Organizaciones de trabajadores	<p>EAs 2001, 2002, 2005-2006: Según la CIOSL: i) ciertas prácticas de las maquiladoras obligan a los empleados a firmar declaraciones que los dejan fuera de las negociaciones colectivas; ii) sin registrarse, un sindicato no puede convocar una huelga o participar en convenios colectivos y está excluido de todos los comités tripartitos; iii) la ley no permite a los trabajadores con contratos precarios negociar contratos colectivos; y iv) deficientes en la LFT han sido explotadas para crear falsos contratos colectivos que se llaman «contratos de protección» y v) la ley no permite la existencia de dos o más sindicatos en el mismo organismo estatal y los trabajadores tienen que afiliarse a sindicatos afiliados al sindicato de la función pública (i.e. la Federación de Sindicatos de Trabajadores al Servicio de Estado).</p>

	Según el Gobierno	<p>EA 2009: Según el Gobierno: En el párrafo 36 de la Introducción del Examen anual de 2008 (OIT: GB.301/3), los Expertos Consejeros en la Declaración de la OIT hacen mención a que en México además de otros países, las restricciones del derecho de sindicación de los trabajadores de los servicios públicos, no son compatibles con la plena realización de este principio y derecho. Al respecto, se señala que el derecho a la libre sindicalización, así como el derecho de negociación colectiva para los trabajadores al servicio del estado se encuentran garantizados en el artículo 123, apartado B, fracción X de la Constitución Política de los Estados Unidos Mexicanos. En dicho precepto se establece que estos trabajadores tendrán el derecho de asociarse para la defensa de sus intereses comunes y hacer uso del derecho de huelga cuando se viole de manera general y sistemática los derechos que esa disposición señala.</p> <p>EA 2008: Según el Gobierno: El Plan Nacional de Desarrollo 2007-2012, mismo que tiene como finalidad establecer los objetivos nacionales, las estrategias y prioridades que deberán regir al Gobierno durante la presente Administración, postula que, para lograr una economía competitiva y generadora de empleos, una de las estrategias a seguir consiste en la promoción del empleo y la paz laboral; por tanto, una de las políticas nacionales del Gobierno de México se centrará en promover y vigilar el estricto cumplimiento de la normatividad laboral e impulsar su actuación, así como promover la productividad en las relaciones laborales, la competitividad de la economía en su conjunto, la oferta de empleo formal y con dignidad, y la salvaguarda de los derechos fundamentales de los trabajadores, señaladamente el de la contratación colectiva del trabajo, la autonomía y la libertad sindical y el derecho de huelga. Garantizando con ello la aplicación y promoción de estos principios. En materia de libertad sindical del período comprendido entre el 1.º de mayo de 2006 al 1.º de junio de 2007, se han registrado 9.212 emplazamientos a huelga, de los cuales únicamente 45 se han convertido en huelgas estalladas, lo que representa un índice de estallamiento de huelgas de un 0,5 por ciento. En materia de negociación colectiva, en este mismo período se han celebrado 2.736 revisiones salariales y 1.437 revisiones contractuales resultando beneficiados 54.223 trabajadores. Por cuanto hace a los conflictos colectivos, se han resuelto mediante la conciliación 2.136, conflictos; por desistimiento 3.359 y por otros motivos 3.646, lo cual arroja un índice de conciliación del 60 por ciento. Asimismo, el Plan Nacional de Desarrollo prevé modernizar el marco normativo laboral para promover la productividad y competitividad laboral, garantizando en todo momento los derechos de los trabajadores.</p> <p>EA 2007: Según el Gobierno: El Gobierno considera indispensable el fortalecimiento de la concertación y el diálogo entre los factores de la producción, así como el análisis de la realidad desde los diferentes puntos de vista de los actores sociales, para buscar con ellos, de manera corresponsable, soluciones a los problemas y realidades sociales del país.</p> <p>EAs 2003 y 2006: México no ha ratificado el C.98. De hecho, la Cámara de Senadores de la República decretó ratificar el mismo con una reserva por lo que se refiere al inciso b), apartado 2 del artículo 1 del Convenio. De esta manera, los mandatos establecidos en el artículo 123 de la Constitución y la Ley Federal del Trabajo tendrían precedencia por lo que se refiere a la libertad de asociación y la libertad sindical. Sin embargo, la OIT no ha admitido la ratificación de México, debido a que esta Organización no admite reservas. Sin embargo, en el marco de la «Nueva Cultura Laboral», se trabaja en una reforma legislativa laboral que coadyuve a promover la capacitación, la participación y una remuneración de los trabajadores, mismo que culminó en un proyecto de reformas en La LFT que aborda el tema de la libertad sindical y el reconocimiento efectivo del derecho a la negociación colectiva, mismo que se convirtió en iniciativa de ley el 12 diciembre de 2002.</p> <p>En respuesta a los comentarios de la CIOSL, el Gobierno señala lo siguiente: i) en relación con la ratificación del C.98, a la fecha no ha habido algún cambio sobre la reserva hecha por el Senado de la República al inciso b), numeral 2 del artículo 1.º del Convenio; ii) la reforma laboral sigue pendiente y podría afectar el derecho de negociación colectiva; iii) dentro del marco del diálogo social que llevan a cabo los trabajadores y empleadores de México, el Gobierno actúa como facilitador y vigila que no se afecten las garantías o derechos constitucionales y legales, por lo tanto, son los partes inmersas en la negociación colectiva quienes deciden el resultado de la misma; iv) En relación con los contratos precarios, hay que hacer la diferencia entre el contrato de prestación de servicios profesionales que es civil y los contratos laborales que son de índole laboral – en caso de que se compruebe la existencia de los elementos de subordinación y dependencia económica, se presumirá la existencia de una relación laboral independientemente de que exista un contrato de prestación de servicios profesionales; y v) los contratos colectivos de trabajo constituyen el resultado de la negociación directa entre ambas partes, reflejando sus experiencias y necesidades, creando con ello las normas laborales de las empresas, con la sola limitación de no afectar las garantías de los trabajadores previstas por las legislaciones correspondientes y se encuentren regidos por la voluntad de las partes que lo celebran, sin que la legislación contemple los acuerdos a los que el documento hace referencia.</p>
COOPERACION TECNICA		

	Solicitudes	EA 2005: Según el Gobierno: No hace falta cooperación técnica de la OIT. Según la CONCAMIN, sin embargo, no sólo es necesaria la cooperación técnica con la OIT y medidas para mejorar la concienciación respecto de estos principios, sino también llevar a cabo una reforma legislativa pertinente e intercambiar experiencias entre países y regiones.
	Ofertas	No hay comentarios
OBSERVACIONES/ RECOMENDACIONES DE LOS EXPERTOS CONSEJEROS	EA 2008: Los Expertos Consejeros en la Declaración de la OIT reconocen el número importante de actividades promocionales relativas al principio y derecho en México (y en algunos otros países), e incitan a la Oficina a mantener esfuerzos para apoyar estas actividades. Notan también que las restricciones al derecho de organización de ciertas categorías de trabajadores en México (y en algunos otros países), así como los trabajadores de los servicios públicos, no son compatibles con la realización de este principio y derecho (Cf. párrafos 35 y 38 de la Introducción del Examen anual de 2008-OIT:GB.301/3).	
OBSERVACIONES/ RECOMENDACIONES DEL CONSEJO DE ADMINISTRACION	Ninguna.	



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: MYANMAR

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , except for the 2000 and 2001 Annual Reviews (ARs). No change report for the 2006 and 2007 ARs.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and the Workers' Welfare Associations concerned by means of consultations and communications of Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the UMFCCI	
	Workers' organizations	2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU). 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Myanmar ratified in 1955 of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) (C.87). However, it has not yet ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C. 98).
		Ratification intention	YES, in 2002 for C.98. 2008 AR: The Government indicated that it would consider the ratification of C.98 once the new Constitution is promulgated. The UMFCCI supports the ratification of C.98. 2001 AR: According to the Government: C.98 has been submitted to the competent authorities for review. -Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001): The Government intended to ratify C.98.
	Recognition of the principle and right (prospect(s), means of action, main legal provisions)	Constitution	2004 AR: According to the Government: The Constitution is in the drafting stage.

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Policy, legislation and/or regulations	<ul style="list-style-type: none"> Legislation: <p>2005 AR: According to the Government: In the public sector, workers' rights are stressed in the fundamental rules, orders and directives. Workers in the private sector have their rights protected by the labour laws.</p> <p>2002 AR: According to the Government: Labour laws were being reviewed in the light of social and economic changes. This labour law reform will take into account the provisions of the State Constitution, which is in a drafting stage, as well as the comments and observations made by the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards.</p>	
		Main legal provisions	(i) Pending the adoption of a new Constitution; (ii) the Labour Code; (iii) fundamental rules; (iv) orders; and (v) directives.	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2003 AR: According to the Government: No government authorization/approval is required to conclude collective agreements. The right to collective bargaining can be exercised by all categories of employers.
			For Workers	<p>2004 AR: According to the Government: Workers have the right to bargain individually or collectively for their rights within the existing Workers' Welfare Associations. Workers of factories and establishments have also the right to bargain collectively.</p> <p>2003 AR: No government authorization/approval is required to conclude collective agreements. The right to collective bargaining cannot be exercised in the public service. However, the principle and right (PR) can be exercised at the enterprise level.</p>
			Special attention to particular situations	2003 AR: According to the Government: Special attention is given to women and specific categories of persons.
			Information, data collection and dissemination	<p>2008 AR: According to the Government: From January to July 2007, several cases have reached agreement through negotiation and conciliation, with a total compensation amounting to Kyat 69,376819 (about US\$ 50,500 as of October 2007).</p> <p>2004 AR: According to the Government: From July 2002 to July 2003, the Township-Level Workers' Supervisory Committees heard and settled 305 cases concerning workers' rights that were either collectively or individually bargained for by the workers.</p>
		At international level	NIL	

	Monitoring, enforcement and sanctions mechanisms	<p>2008 AR: According to the Government: From January to July 2007, several cases have reached agreement through negotiation and conciliation. The compensation to the workers amounted to 69376819 Kyat.</p> <p>2005 AR: According to the Government: Inspection/monitoring mechanisms and capacity building of responsible government officials have been implemented. Legal reform and special institutional machinery are envisaged. In instances where the PR has not been respected, grievances can be submitted to the Ministry of Labour and to competent courts if no solution is found.</p> <p>2004-2005 ARs: According to the Government: The Township Level Workers' Supervisory Committees ensure workers' rights by means of conciliation and negotiations with the parties concerned within the juridical confines of the 1929 Trade Disputes Act, the conciliation handbook, directives and rules. Between January 2000 and January 2003, the Supervisory Committees successfully settled 1,069 cases.</p> <p>2004 AR: The Government indicated that it had assumed responsibility for ensuring the settlement and attainment of workers' rights.</p>	
	Involvement of the social partners	NIL	
	Promotional activities	2008 AR: According to the UMFCCL: the General Secretary of the industry's association organizes and promotes skill training seminars for workers.	
	Special initiatives/Progress	<p>2008 AR: The Government indicated that trade unions were created, especially in Yangon Division, which is under the supervision of the supervisory Committee of the Industrial Zones. Accordingly, workers' organizations in eleven sectors have been formed in the industrial zones of Yangon Division and more workers' organizations will be formed in other states and Divisions. Subsequently, these initial workers' organizations will eventually form a union. It also added that the first level trade unions would be launched along with the new Constitution and the Labour Code.</p> <p>2003 AR: According to the Government: The establishment in 2001 of the Myanmar Overseas Seafarers' Association.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	2008 AR: According to the UMFCCL, the economic conjuncture is very fragile due to the economic embargos and sanctions placed on Myanmar by several western countries.
		Workers' organizations	<p>2007 AR: The ICFTU raised the following additional challenges: (i) It is difficult to have a clear idea of the legal system in force; (ii) only one single trade union system exists; (iii) the current legislation does not recognizes the principle of freedom of association; (iv) the independent Federation of Trade Unions-Myanmar (FTUM) is still obliged to operate clandestinely.</p> <p>2006 AR: According to the ICFTU: (i) Legislation is obscure in Myanmar and any legal institutions can be overruled by military decrees or by the action of any powerful officials; (ii) restrictions are imposed under the 1929 Trade Disputes Act (amended in 1966), which appears to define the means of resolving industrial disputes; (iii) while negotiations are under way under the chairmanship of the Township Level Workers' Supervision Committees, the workers are to continue to work as not to affect production and no demonstrations are allowed either inside or outside the factory; (iv) the independent Federation of Trade Unions-Myanmar (FTUM) monitors among others the denial of collective bargaining rights in industrial sectors, which it communicates to the ILO and to the international labour movement. The FTUM members caught doing so incur the death penalty.</p> <p>2000-2002 ARs: According to the ICFTU: (i) there is no legal framework to protect collective bargaining; (ii) abuse of workers' rights is rampant, especially in export-oriented industries.</p>

	According to the Government	2007 AR: In response to the ICFTU's observations, the Government made the following comments: (i) authorities have been set up to conciliate workers' and employers' disputes; (ii) some trade unionists have to function clandestinely because they transgress the law; (iii) the FTUM does not operate in the country, it is an unlawful association as mentioned in the Declaration of the Ministry of Home Affairs notification No. 3/2005.
TECHNICAL COOPERATION	Request	2008 AR: The UMFCCI indicated that ILO technical assistance is needed in order to better train the workers in Myanmar. 2005 AR: According to the Government: There is a need for ILO technical cooperation to facilitate the realization of the PR in Myanmar, in particular in assessing difficulties and their implication for realizing the PR.
	Offer	NIL
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	2003 AR: In light of requests by Myanmar for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, the ILO Declaration Expert-Advisers (IDEAs) called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field (Cf. Paragraphs 74 of the 2003 AR Introduction – ILO: GB.286/4).	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: NEPAL

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, except for the 2002 and 2003 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Employers' Council of the Federation of Nepalese Chamber of Commerce and Industry (FNCCI), the General Federation of Nepalese Trade Unions (GEFONT), the Nepalese Trade Union Congress (NTUC), the Democratic Confederation of Nepalese Trade Unions (DECONT), the National Democratic Confederation of Nepalese Trade Unions (NDCONT), the All Nepal Federation of Trade Union (ANFTU) through communication of the Government's report.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the FNCCI comprised of 90 affiliates.	
	Workers' organizations	2009 AR: Observations by the GEFONT and the NTUC. Observations by the International Trade Union Confederation (ITUC) 2008 AR: Observations by the NDCONT comprised of 20 affiliates Observations by the ANFTU comprised of 22 affiliates Observations by the DECONT comprised of 25 affiliates Observations by the GEFONT. Observations by the ITUC. 2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Nepal ratified in 1996 the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) (C.87).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>Yes, since 2000, for C.87 (in process since 2006).</p> <p>2009 AR: The Government reiterated its earlier commitment to the ratification of C.87. The GEFONT and NTUC supported the ratification of C.87. Furthermore the NTUC indicated that C.87 was expected to be ratified soon and this process should be facilitated by the adoption of the expected new Labour Act.</p> <p>2008 AR: According to the Government: Nepal has already ratified C.98 and is now in the final stage of ratifying C. 87, which will be presented to the Cabinet for endorsement. The FNCCI expressed its support to the ratification of C.87 and indicated that it was currently being discussed before a tripartite committee. The NDCONT, the ANFTU and the DECONT supported the ratification of C.87. They indicated that a Central Advisory Committee under the Ministry of Labour has already endorsed the ratification of C.87. The document will be subsequently submitted to the Cabinet and the Parliament for final approval.</p> <p>2007 AR: According to the Government: The ratification of C.87 is in process.</p> <p>2001-2002 ARs: According to the Government: Nepal is in the process of amending minor clauses in the Police Act and the Military Act to introduce some reservations for these sectors for the purpose of the ratification of C.87. Moreover, a technical committee has been implemented to initiate the process of ratifying ILO core Conventions.</p> <p>2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001): The Government intended to ratify C.87.</p>
	Recognition of the principle and right (prospect(s), means of action, main legal provisions)	Constitution	<p>YES</p> <p>2008 AR: The Government indicated that in the new Interim Constitution of Nepal, dated January 2007, the rights to freedom of association and to collective bargaining have been enshrined as fundamental rights. Several tripartite discussions have therefore been conducted to promote the PR.</p> <p>Article 12 of the Constitution of the Kingdom of Nepal guarantees to all the citizens the right to freedom to assemble peacefully and without arms and to form unions and associations.</p>
		Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Policy <p>2006 AR: The Government indicated that it has developed a new Labour and Employment Policy and a National Plan of Action on Decent Work in consultations with the social partners and other stakeholders.</p> <ul style="list-style-type: none"> • Legislation <p>The Trade Union Act, 1993 and the Labour Act, 1992 deal with the principle and right (PR).</p>
		Main legal provisions	(i) Constitution (article 12); (ii) Trade Union Act, 1993, (iii) Labour Act, 1992.
		Judicial decisions	2005 AR: The Government mentioned a case filed by the Jagriti Child Club in the Supreme Court in 1998 which had challenged the Government's decision to deny the registration of the Child Club as an organization based on existing Organization Registration Act, 1977. The Act demanded a citizenship certificate, which children cannot obtain until the age of 16. It was also argued that the children as minors are not able to bear all the responsibilities or the liabilities arising thereof. The Supreme Court declared the decision void in 2001. This decision had set a precedent and was considered to be a milestone in the children's right to association.

EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2004-2005 ARs: Government authorization or approval is required to establish employers’ organizations, but not to conclude collective agreements. Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by all categories of employers.	
			For Workers	2004-2005 ARs: Government authorization or approval is required to establish workers’ organizations, but not to conclude collective agreements. The principle and right (PR) can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons: medical professionals; teachers; agricultural workers; workers engaged in domestic work; migrant workers; workers of 18 years old or over (16 years old in the 2004 AR); workers in the informal economy. However, the gazetted level civil servants engaged in the management of state affairs and senior level employees of public enterprises cannot exercise freedom of association (FOA). All workers in the public service and any group of workers that fails to organize into collective entities or unions cannot exercise collective bargaining.	
			Special attention to particular situations	NIL	
			Information and Data collection	According to the Government: Lack of information.	
		At international level	According to the Government: There are no particular restrictions for the international affiliation of employers’ and workers’ organizations.		
	Monitoring, enforcement and sanctions mechanisms	2008 AR: The Government indicated that in the new Interim Constitution of Nepal dated January 2007, the rights to freedom of association and to collective bargaining have been enshrined as fundamental rights. Several tripartite discussions have therefore been conducted to promote the PR. 2005 AR: According to the Government: Action is taken where FOA has not been respected. The principle is constitutionally guaranteed and legally protected in the country, in case of violation of this from any quarter; the concerned party can have recourse to the Labour Court or Appellate Court and even to the Supreme Court for remedies. Since 1996, Nepal has a labour court to deal with industrial disputes.			
	Involvement of the social partners	2006 AR: According to the Government: a new Labour and Employment Policy and a National Plan of Action on Decent Work have been developed in consultations with the social partners and other stakeholders. 2000-2002 ARs: According to the Government: Consultations with the social partners concerning the ratification of C.87 have been held through the formation of a technical committee.			

	Promotional activities	<p>2009 AR: The Government indicated that a sensitization and awareness campaign was organized to promote the ratification of C.87. The GEFONT stated that it had organized a number of promotional activities for its members. In addition, the amendment of the Trade Union Act would facilitate freedom of association, and the transit of Nepal to a federal system of governance would also increase access to social dialogue.</p> <p>2008 AR: The Government indicated that in the new Interim Constitution of Nepal dated January 2007, the rights to freedom of association and to collective bargaining have been enshrined as fundamental rights. Several tripartite discussions have therefore been conducted to promote the PR.</p> <p>According to the FNCCI: awareness-raising activities have been organized on the regional level together with workers' associations. The NDCONT, the ANFTU and the DECONT indicated that several meetings have been held by the Ministry of Labour in cooperation with ILO on FOA and the Declaration FPRW.</p> <p>2001-2002 ARs: The Government indicated that it had formed a technical committee with representatives from trade unions, employers' associations and non-governmental organizations (NGOs) with a view to ratifying ILO fundamental Conventions. In cooperation with the ILO it had organized a one-day workshop in Katmandu on November 1999 in order to raise awareness of all stakeholders at the national level on the liabilities linked to the ratification of the ILO core Conventions.</p>	
	Special initiatives/ Progress	NIL	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	2008 AR: The FNCCI raised the issue of the realization of the PR in the private sector with the creation of several new trade unions who have not only social but political demands.
		Workers' organizations	<p>2009 AR: According to the GEFONT: The prevalent pressure from employers should favour ratification of C.87.</p> <p>The ITUC reiterated the observations it made under the previous AR (2008), in particular with respect to: (i) restrictions to forming trade unions (a maximum of four unions is allowed per enterprise); and (ii) restrictions on strikes. It further mentioned that the Government had restored public servants' rights to belong to trade unions through the adoption of the Civil Service Act.</p> <p>2008 AR: The NDCONT, the ANFTU and the DECONT indicated that only the Defense Ministry, Ministry of Justice and Home Affairs Ministry do not agree on the ratification of C.87. Therefore, additional pressure is needed from all social partners. They also added that capacity building and scarcity of manpower are lacking in Nepal. Moreover, the worker's federations indicated that strike restriction remains a problem in practice even though the Essential Service Act was revised in April 2007.</p> <p>2007 AR: According to the ICFTU (Additional challenges): (i) the Government has revoked public servants' rights to belong to unions; and (ii) excessive strikes restrictions.</p> <p>2006 AR: The ICFTU raised the following challenges: (i) the Government again made abusive use of the Essential Services Act to ban strikes; (ii) even though the PR is recognized by law, the Government has not yet implemented all the provisions of these laws; (iii) restrictions at the enterprise level to form trade unions; (iv) strike restrictions; (vi) only few workers are unionized in the informal sector that represents 90% of the national workforce.</p> <p>2002-2005 ARs: The ICFTU raised the following challenges: (i) restriction on strikes; (ii) trade unions are not recognized in the country as representatives of workers, (iii) no structure to bargain and collective bargaining is rarely practiced; (iv) union rights are denied to public officials and bank workers; (v) no trade unions in the informal economy although it represents 70 per cent of the workforce (especially in the agricultural sector).</p>

	According to the Government	<p>2008 AR: According to the Government: capacity of the tripartite social partners needs to be enhanced.</p> <p>2005 AR: According to the Government: The main difficulties encountered in Nepal concerning the realization of the PR are as follows: (i) lack of public awareness and/or support; (ii) lack of information and data; (iii) social and economic circumstances; (iv) political situation; and (v) lack of capacity of responsible government institutions.</p>
TECHNICAL COOPERATION	Request	<p>2009 AR: According to the Government: The ILO's technical cooperation is needed after the ratification of C.87. The NTUC and the GEFONT requested the ILO's technical cooperation to assist workers' organizations.</p> <p>2008 AR: The Government requested technical cooperation and assistance from ILO to improve the collaboration between social partners.</p> <p>According to the FNCCI: ILO technical assistance is needed to carry out training activities for workers and employers. It also requested that a country assessment be conducted on the Declaration follow-up.</p> <p>The NDCONT, the ANFTU and the DECONT required technical assistance from the ILO to facilitate the organization of workshops and training programmes intended to guide the workers on the issue of FOA. ILO technical assistance would also be needed to carry out a country assessment on the Declaration follow-up.</p> <p>The ITUC raised the following challenges: (i) the Government again made abusive use of the Essential Services Act to ban strikes; (ii) freedom of association is severely restricted, a prior approval must be obtained from the Regional Administrator or Chief District Officer to organize workshops, meetings or conferences; (iii) every year, thousands more women find themselves in domestic service, where there are no trade unions.</p> <p>2007 AR: According to the Government: Priority needs for technical cooperation to facilitate the realization of the PR exist in the following areas, in order of priority: (1) capacity building (Government institutions, employers' and workers' organizations); (2) facilitate the legal reform (labour law, trade union law and other relevant regulations).</p> <p>2006 AR: According to the Government: The new Labour and Employment Policy and the National Plan of Action on Decent Work anticipate support and technical cooperation from the ILO and other agencies.</p> <p>2005 AR: According to the Government, priority needs for technical cooperation to facilitate the realization of the PR exist in the following areas, in order of priority: (1) strengthening capacity of employers' organizations, strengthening capacity of workers' organizations, sharing of experiences across countries/regions, capacity building of responsible government institutions, awareness raising, legal literacy and advocacy, strengthening data collection and capacity for statistical collection and analysis; (2) legal reform (labour law and other relevant legislation), strengthening tripartite social dialogue; (3) assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the principle, training of other officials (police, judiciary, social workers, teachers).</p>
	Offer	2001-2002 ARs: ILO

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS/ OBSERVATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) welcomed the inclusion of the principle and right within the Interim Constitution of Nepal. They also noted that restrictions on the right to organize of certain categories of workers in Nepal, such as domestic workers, are not compatible with the realization of this principle and right (Cf. Paragraph 34 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed Nepal among the countries that had been indicating their intention to ratify C.87 and C.98 for several years, with no indication that progress had been made (Cf. Paragraph 33 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The ILO Declaration Expert-Advisers listed Nepal among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification. Moreover, they hoped that the momentum of the positive dialogue on the realization of the PR would be kept and that the intention to ratify C.87 would be realized soon in Nepal (Cf. Paragraphs 13 and 139 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: NEW ZEALAND

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, but "no change" report for the 2002 and 2005 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of Business New Zealand (BNZ) and the New Zealand Council of Trade Unions (NZCTU) through communication of Government reports; and involvement of the most representatives workers' and employers' federations by means of consultations for the 2005 AR.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by BNZ. 2008 AR: Observations by BNZ. 2007 AR: Observations by BNZ. 2006 AR: Observations by BNZ. 2005 AR: Observations by BNZ. 2004 AR: Observations by BNZ. 2003 AR: Observations by BNZ. 2002 AR: Observations by BNZ. 2001 AR: Observations by the NZEF. 2000 AR: Observations by the NZEF.	
	Workers' organizations	2009 AR: Observations by the NZCTU. 2007 AR: Observations by the NZCTU. 2006 AR: Observations by the NZCTU. 2005 AR: Observations by the NZCTU. 2004 AR: Observations by the NZCTU. 2003 AR: Observations by the NZCTU. 2002 AR: Observations by the NZCTU. Observations by the International Confederation of Free Trade Unions (ICFTU). 2001 AR: Observations by the NZCTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	New Zealand ratified in 2003 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		<p>Ratification intention</p>	<p>Unable, for the time being, to ratify C.87.</p> <p>2009 AR: According to the Government: It is New Zealand government policy to ratify treaties only when it is certain that New Zealand will be fully compliant. To all intents and purposes New Zealand already complies with the letter and spirit of this Convention, but is unable to ratify it given that ILO jurisprudence requires that sympathy strikes and strikes on general social and economic issues should be able to occur without legal penalty. This is contrary to New Zealand's employment relations legislative framework, which clearly specifies the range of lawful and unlawful strikes and the respective immunities and penalties involved in taking such actions. Under current law, protected strike action is that which takes place in pursuit of collective bargaining or on worker health and safety grounds. The Government considers that these provisions remain appropriate although an additional review of the compatibility between national employment legislation and the provisions of C.87 could bring a little substantive benefit, as proposed by the New Zealand Council of Trade Unions.</p> <p>According to BNZ: BNZ would reiterate comments made under the previous ARs regarding New Zealand's non-ratification of C.87. In this particular case the problem is not so much with the Convention itself but with the way in which it has been interpreted by the ILO Committee on Freedom of Association. Sympathy strikes, and strikes on social and economic grounds are not in the interests of the country generally and are matters that an affected employer cannot readily deal with. Strikes that inconvenience more than the immediate parties are not, in the opinion of Business New Zealand, something to be encouraged, particularly when, as will often be the case, the focus of the action is on government decision-making. In addition, the decent work concept, with its emphasis on workplace productivity, makes general strikes counter-intuitive. In a democracy there is an electoral process to address concerns of this sort.</p> <p>According to the NZCTU: NZCTU believes that there should be a review of current employment legislation and practice in New Zealand for compliance with C.87 with a view to ratifying that Convention. Recent improvements in employment legislation have strengthened the workers' rights to freedom of association and protection of the right to organise. The NZCTU notes that New Zealand employment policy and practice is more robust in recognizing workers' rights than the policy and practice of many other ILO member States which have ratified C.87. NZCTU notes that New Zealand law and practice complies with a literal reading of C.87. Issues relating to non-compliance are based on the broad interpretation and implications of the discussion by the ILO Committee of Experts on the Application of Conventions and Recommendations, particularly in its General Survey of 1994. The employment legislation and practice in New Zealand has changed since the 1990s, with a particular strengthening of "the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements", as outlined in Chapter V, paragraph 167 of the 1994 ILO General Survey. There has been overall strengthening of employment legislation for collective bargaining by employees in New Zealand, including the use of mediation and judicial processes for examining employment disputes arising from collective bargaining. The NZCTU further notes that the Government adheres to such arbitration processes in general situations where the Government is the employer. The NZCTU recommends therefore a review of the New Zealand employment legislation and practice together with substantive ILO discussions on the issue, such as in the above Chapter V on the right to strike, with a view to ratifying C.87.</p> <p>2008 AR: According to the Government: New Zealand is unable, for the time being, to ratify C.87.</p> <p>According to BNZ: it does not support ratification of C. 87 for reasons stated previously given the broad interpretation by the Committee on Freedom of Association that includes the right. The BNZ considers that such strikes benefit neither employers nor employees and could only undermine current government attempts to transform the New Zealand economy.</p> <p>The NZCTU stated its support to the ratification of C.87, however, the employment legislation and practice had to be reviewed.</p>
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			<p>2007 AR: According to the Government: New Zealand’s policy remains not to ratify any Convention unless law, policy and practice fully comply with the provisions of the Convention.</p> <p>2004 AR: The Government stated that it is continuing to monitor the compatibility of national law, policy and practice with C.87 to assess whether ratification of this instrument will be possible in the future.</p> <p>2001 AR: The Government stated that its intention is to promote observance in New Zealand of the principles underlying in C.87 and C.98 in order to ratify them.</p> <p>Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001): The Government intended to ratify C.87 and C.98.</p>	
Recognition of the principle and right (prospect(s), means of action, main legal provisions)	Constitution	NIL		
	Policy/Legislation and/or Regulations	<ul style="list-style-type: none">• Legislation <p>2006 AR: The Government indicated that the Employment Relations Amendment Act, 2004 came into force on 1 December 2004. The objectives of this Act are the promotion of union access, representation rights and collective bargaining. The amendments include among others the prohibition of employers from deliberately undermining union membership through the automatic passing on of union negotiated benefits to non-union employees</p> <p>NZCTU welcomes the employment law changes introduced by the Employment Relations Act (No.2), 2004.</p> <p>2004 AR: The Government points out that it is currently reviewing the Employment Relations Act, 2000 with the aim of considering what legislative changes are required so that the Act can better meet its statutory objectives of promoting freedom of association and the right to collective bargaining (PR).</p> <p>2001-2002 ARs: The Employment Relations Act (ERA), 2000, which came into force on 2 October 2000, replaces the Employment Contracts Act (ECA). According to the Government: One of the overall objectives of the ERA is to promote observance of the principles underlying C.87 and C.98. The Act also modifies existing provisions relating to the rights to strike and lockout, including a change to provide that workers and their organizations are able to take industrial action in support of multi-employer collective agreements.</p>		
	Main legal provisions	(i) the Employment Relations Amendment Act, 2004 (ii) the personal grievance provisions of the Act (Part IX); (iii) the New Zealand Bill of Rights Act 1990 (NZ BOR Act); (iv) the Human Rights Act, 1993 (HR Act); (v) the Employment Relations Act, 2000.		
	Judicial decisions	<p>2008 AR: <i>Christchurch City Council v Southern Local Government Officers Union Inc</i> (2007) 4 NZELR 63; [2007] NZCA 11 <i>Greenlea Premier Meats Limited v New Zealand Meat & Related Trade Union Inc</i> (16 June 2006, Employment Court)</p> <p>2006 AR: J. Wilson, 24 August 2004, CA 100/04 — Judgment No. CC 12/05</p>		
Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2003-2005 ARs: The PR can be exercised at enterprise, sector/industry, national and international levels by all categories of employers, without Government authorization/approval.	

			For Workers	<p>2003-2005 ARs: Government authorization/approval is necessary to establish a workers' organization, but not to conclude collective agreements. The PR can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons: all workers in the public service; medical professionals; teachers; agricultural workers; workers engaged in domestic work; migrant workers; workers of all ages workers in the informal economy.</p> <p>The armed forces are not covered by the legislation and the police are covered under the ERA, but with certain separate arrangements that apply to sworn police officers under the Police Act, 1958.</p>
			Special attention to particular situations	2003-2005 ARs: According to the Government: Women and young persons.
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	Information and data collection	<p>2009 AR: The Government indicated that between 2003 and 2007 union membership as a proportion of the total employed labour force has been static at approximately 17 per cent. Union membership is higher in the public sector and large enterprises in the private sector.</p> <p>2007 AR: According to the Government: An amended Code of Good faith publication is available upon request, and information is also available at any time on the web at www.ers.govt.nz/goodfaith/code.html. Moreover, the Collective Agreement Database & strike information databases are linking actively with the Department's Mediation Service to pre-empt potential collective bargaining problems. The databases contain information on proposed and historical strike action.</p> <p>2002 AR: According to the Government: The Department of Labour has revised its database to cover all collective agreements and collect information relevant to the Employment Relations Act, including information on unions and union membership. Analysis of this information showing trends in collective bargaining arrangements and outcomes is presented in its magazine <i>ERA Info</i>, and distributed free to interested groups including unions and employers.</p> <p>2001 AR: According to the Government: the Department of Labour's analysis of collective employment contracts, in its database of contracts covering 20 or more employees, shows that in September 2000, 79 per cent of employees covered by these contracts were represented by a union.</p> <p>2000 AR: According to the Government: The Industrial Relations Centre at Victoria University continues to survey trade unions annually. The survey provides estimates of the number and membership of unions at 31 December of each year.</p>
		At international level		According to the Government: There are no particular restrictions on the international affiliation of employers' and workers' organizations.

	Monitoring, enforcement and sanctions mechanisms	<p>2003-2006 ARs: According to the Government: The following measures have been implemented to respect and implement the PR: (i) legal reform (labour law and other relevant legislation); (ii) inspection/monitoring mechanisms; (iii) penal sanctions; (iv) civil or administrative sanctions; (v) special institutional machinery.</p> <p>2001 AR: According to the Government: The Registrar of Unions (as well as members of a union, other unions and affected employers) is able to take action through the appropriate authorities if they believe a union has acted contrary to the provisions of the Act or unlawfully in some other manner, or contrary to their own rules.</p> <p>2000 AR: According to the Government: The ERA ensures the effectiveness of collective agreements by specifying minimum requirements for collective bargaining, including that there must be a ratification procedure, that collective contracts be in writing and that collective contracts include a date of expiry.</p>
	Involvement of the social partners	<p>2009 AR: The BNZ and the NZCTU indicated that they had participated actively in the provision of employment relations education course.</p> <p>2006 AR: Involvement of the social partners in the amendment and promotion of the Employment Relations Amendment Act, 2004.</p> <p>2003 AR: According to the Government: Through the implementation of tripartite discussion of issues. Moreover, consultation is underway with New Zealand's social partners – NZCTU and BNZ - to address the compatibility of the ERA with C.87 and C.98.</p>
	Promotional activities	<p>2009 AR: The Government stated that it had organized employment relations education activities that assisted in increasing employers', employees' and unions' knowledge of employment matters. The BNZ and the NZCTU indicated that they had participated actively in the provision of employment relations education course.</p> <p>2008 AR: The BNZ stated that its regional employers' organisations are involved in the provision of employment relations education and as well provide advice and information to their employer members through seminars, advice line services, collective and individual bargaining assistance and so on.</p> <p>2007 AR: According to the Government: A government budget of NZ \$ 2 millions is being provided annually towards an openly contestable employment relations' education fund. This has resulted in the creation of 282 courses for 2005/06. The courses are designed to increase skills and knowledge of employers and workers in employment matters and to improve relationships within the workplace to allow parties to deal with each other in good faith.</p> <p>-The BNZ stated that its regional employers' organisations are involved in the provision of employment relations education and as well provide advice and information to their employer members through seminars, advice line services, collective and individual bargaining assistance and so on.</p> <p>2003 AR: According to the Government: The following measures have been implemented to promote and implement the PR: (i) capacity building of responsible government officials; (ii) training of other government officials; (iii) capacity building for employers' and workers' organizations; (iv) awareness raising/advocacy activities.</p> <p>-Moreover, Information Officers and Labour Inspectors have conducted approximately 400 talks or seminars about employment rights and obligations with high schools, tertiary providers, Citizens Advice Bureaus, industry training providers, workplaces, community representatives, and employers.</p> <p>-A tripartite meeting was held in New Zealand in February 2002, with the Director of the International Labour Standards Department.</p> <p>2002 AR: According to the Government: The ERA provides for paid leave for eligible employees (union members) to undertake approved courses in employment relations' education.</p> <p>2001 AR: According to the Government: The Department of Labour is currently undertaking an extensive information campaign, utilizing a number of forums, relating to the new statutory regime. This information campaign includes material relating to the promotion of freedom of association and the right to collective bargaining.</p>

	Special initiatives/Progress	<p>2008 AR: The Department is moving to publish information on collective bargaining outcomes and union membership online to replace Employment Relations info in 2007/08.</p> <p>2006 AR: According to the Government:</p> <ul style="list-style-type: none"> – The Department of Labour held ‘Road shows’ in major centers in 2005 that discussed the amendments implemented by the Employment Relations Amendment Act 2004. The ‘Road shows’ were well attended by employers’ and employees’ representatives. – Employment Relations Education (ERE) continues to help employers, unions and employees improve their skills and knowledge of employment matters, including on the PR. – Involvement in ERE continues, and over 200 ERE courses are approved under the Employment Relations Act 2000. – The ERE Contestable Fund continues to have New Zealand \$ 2 million available annually for courses. In 2004/05, 24 organizations were funded for employment relations’ education, and two organizations for Health and Safety Representative training. – Some organizations, particularly NZCTU and BNZ, have become major providers of both ERE and Health and Safety Representative training. The range of projects funded continues to expand, and includes researching the employment relations needs of migrant workers and educating union representatives on enterprise and industry economics.
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	<p>Employers’ organizations</p> <p>2008 AR: According to BNZ: There are concerns that the recent contract proposals developed by the Government, particularly in the health sector, overrides to some extent the integrity of individual choice regarding membership of a union.</p> <p>2007 AR: According to BNZ: ratification of C.87 would not be in the interests of New Zealanders generally, given that the Convention has been interpreted as permitting sympathy strikes and boycotts as well as strikes on social and economic grounds which would affect many more individuals than those whom such action is intended to influence.</p> <p>2006 AR: According to BNZ, limiting the right to officially registered unions is a retrograde step, which prevents the full realization of freedom of association.</p> <p>2003 AR: BNZ raised the following challenges: (i) women in New Zealand do not suffer from labour market disadvantage; (ii) encourages the Government not to ratify C.87 and C.98; (iii) and does not believe it is in the interest of New Zealanders, and more generally of employers, to face the possibility of sympathy strikes and boycotts and strikes on social, and economic grounds, which they have no ability to resolve; (iv) Such strikes are in contradiction with strike action as originally conceived, that is, as an action to enable employees with little bargaining power to challenge an employer with greater bargaining power.</p> <p>2002 AR: According to BNZ’s: (i) only unions are entitled to negotiate collective agreements, and to be so entitled, the union itself must be officially registered, (ii) freedom to associate is limited; (iii) paid employment relations educational leave is available only to employees who are union members; (iv) and the Act promotes registered unions only.</p> <p>2001 AR: The NZEF raised the following challenges: (i) before employees can form a union of their own choosing they need to have 15 potential members; (ii) unions are also required to register as an incorporated society.</p> <p>2000 AR: No particular challenges have been raised by the NZEF.</p>

		Workers’ organizations	2009 AR: The NZCTU stated that union membership rates continued to be low, in particular, in the private sector. 2007 AR: According to NZCTU: lack of information and data collection caused by the cancellation of the magazine <i>ERA Info</i> . 2000 and 2002 ARs: According to ICFTU: (i) trade union membership plummeted; (ii) the limitation on strike rights remain the same in spite of the coming into force of the ERA; (iii) ICFTU encourages the Government to ratify C.87 and C.98; and (iv) the Government has not amended the ECA to make it consistent with the promotion and encouragement of collective bargaining, as well as to allow trade unions to go on strike in support of multi-employer collective agreements. 2001-2004 ARs: NZCTU raised the following challenges: (i) two categories of workers are restricted from the PR: people required to work in order to continue receiving the “community wage” or unemployment benefit under the Social Security (Work Test) Amendment Act 1998, and prisoners working for private enterprises during the course of their imprisonment; (ii) the ECA provides insufficient protections for the PR.
	According to the Government		2009 AR: The Government indicated that between 2003 and 2007 union membership as a proportion of the total employed labour force has been static at approximately 17 per cent. Union membership is higher in the public sector and large enterprises in the private sector. 2007 AR: In response to NZCTU’s comments, the Government indicated that the Department of Labour has undertaken to provide information on the Employment Relations Service website. The information will be available to a wider audience and will be updated on a more frequent basis than the previous publication. This website should be online by Christmas 2006. 2006 AR: In response to BNZ’s comments, the Government indicated that the requirements that only officially registered unions may bargain collectively does not constitute a barrier to freedom of association. Registration as a union protects members’ interests and gives access to the rights afforded to unions under the Employment Relations Act.
TECHNICAL COOPERATION	Request	NIL	
	Offer	ILO, GCC.	
EXPERT-ADVISERS’ RECOMMENDATIONS	2009 AR: The NZCTU indicated that the ILO’s cooperation was needed in the review of the New Zealand legislation and practice for compliance with C.87. 2008 AR: The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of New Zealand (and three other governments) had indicated the current impossibility to ratify C. 87, without further justification (Cf. Paragraph 29 of the 2008 Annual Review Introduction – ILO: GB.301/3). 2005 AR: The IDEAs listed New Zealand among the countries where some efforts are being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification. Furthermore, the ILO Declaration Expert-Advisers stated that they hope that the momentum of the positive dialogue on the realization of the PR will be kept, and the intention to ratify C.87 will be realized soon in New Zealand (Cf. Paragraphs 13 and 139 of the 2005 Annual Review Introduction – ILO: GB.292/4). 2004 AR: The IDEAs noted the meaningful exchange that can take place when employers’ and workers’ organizations enter the process of dialogue that is also constituted by this annual review process such as in the case of New Zealand (Cf. Paragraph 82 of the 2004 Annual Review Introduction – ILO: GB.289/4). 2001 AR: The IDEAs noted that relatively few national employers’ organizations had submitted separate observations; but where they did, they offered useful insights into their experiences and the implications of recent legislative and institutional developments, such as in New Zealand ((Cf. Paragraph 76 of the 2001 Annual Review Introduction – ILO: GB.280/3/1).		
GOVERNING BODY RECOMMENDATIONS	NIL		



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: OMAN

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, since the start of the Annual Review (AR) in 2000.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Omani Chamber of Commerce and Industry (OCCI), the General Federation of Oman Trade Unions (GFOTU) and the Board of Employers' and Workers' Organizations (the Oman Oil Company; Khimji Ramdas, Oman Oil Company, Ahmed and Mohammed Khunji, W.J. Towel and Baqir Salman) through communication of government reports and tripartite meetings on reporting issues.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by the OCCI. 2007 AR: Observations by the OCCI.	
	Workers' organizations	2009 AR: Observations by the GFOTU. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the General Federation of Oman Trade Unions (GFOTU) that substituted the Main Omani Workers' Committee (MOWC). Observations by the ITUC. 2007 AR: Observations by the Main Omani Workers' Committee (MOWC). Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the MOWC. Observations by the ICFTU. 2005 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Oman has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>YES, since 2002 for C.87 and C.98.</p> <p>2009 AR: The Government stated that it strongly supported the ratification of C.87 and C.98. However, national laws needed to be in compliance with C.87 and C.98. The OCCI supported the ratification of C.87 and C.98 by Oman. The GFOTU supported the ratification of C.87 and C.98 by Oman.</p> <p>2008 AR: The Government reiterated its support to the ratification of C.87 and C.98 and added that once national labour laws come in line with international standards, the process of ratification will be initiated. The GFOTU supported the ratification of C.87 and C.98.</p> <p>2007 AR: The Government indicated that ratification of C.87 and C.98 was under consideration. It also mentioned, together with the OCCI and the MOWC, the need for tripartite discussions and ILO support for ratification of all ILO Fundamental Conventions by Oman.</p> <p>2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (2002): The Government intended to ratify C.87 and C.98.</p>
	Recognition of the principle and right (prospect(s), means of action, main legal provisions)	Constitution	YES , the Basic Statute, article 80, provides for freedom of assembly and association.
		Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Policy <p>The Government's prospects: Compliance with the fundamental principles and rights of workers in the Constitution, legislation and labour laws.</p> <ul style="list-style-type: none"> • Legislation <p>Oman has amended its Labour Law in 2006 by a Royal Decree (74/2006) and (112/2006). The 2003 Labour Law, the Statute on the establishment of associations and the Civil Service Law for the establishment of workers' committees in the Public Service relate to the principle and right (PR).</p> <ul style="list-style-type: none"> • Regulations <p>2008 AR: The Government indicated that Ministerial Decisions No. 294/2006 and 17/2007 were issued on the regulation of collective bargaining, peaceful strike and closure. It added that Ministerial Decision No.24/2007 was also issued relating to the establishment of trade unions and the General Federation of Oman Trade Unions (GFOTU). The Government noted that all draft decrees and decisions had been sent to the ILO Norms Department for comments and subsequently issued in accordance with international labour standards.</p> <p>2007 AR: Two Ministerial Decrees (No. 135/2004 and No. 136/2004)) relate to the composition of workers' committees and committees for employers of enterprises. Sultan Decree No. 8/80 (1982) provides for service regulations in the Public Service, including the establishment of workers' committees and the settlement of disputes.</p>

		Main legal provisions	<p>2008 AR: The Royal Decree No. 74/2006 issued on 8 July 2006 together with a Ministerial Decision No.24/2007 on the formation, functioning and registration system of the labour unions and labour associations. Moreover, ministerial Decision No.24/2007 was issued relating to the establishment of trade unions and the GFOTU.</p> <p>2007 AR: The amendment of Decrees No. 135/2004 and 136/2004 to comply with the Royal Decree 74/2006 and Ministerial Decision No. 294/2006 on Regulation of collective bargaining, peaceful strike and closure was issued on 29 October 2006.</p> <p>(i) Section 80 of the Basic Statute; (ii) the Statute on the establishment of associations; (iii) the Labour Law (No. 35/2003); (iv) the Civil Service Law for the establishment of a staff committee for workers in the Public Service; (v) two Ministerial Decrees (No. 135/2004 and No. 136/2004) relating to the composition of workers' committees and employers of enterprises employing 50 workers or more.</p>	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	<p>2007 AR: According to the Government: Government approval to conclude collective agreements is not required since the amendment of the Labour Law.</p> <p>2003-2005 ARs: Prior government authorization is necessary to operate employers' organizations and conclude collective agreements. All categories of employers can set up their organizations.</p>
			For Workers	<p>2007 AR: There is no more restriction on the right to form trade unions or to conclude collective bargaining since the amendment of the Labour Law.</p> <p>2002-2005 ARs: Prior government authorization is necessary to operate workers' organizations (Law No.35/2003 and two Ministerial Decrees (No. 135/2004 and No. 136/2004). Freedom of Association (FOA) can be exercised by all workers in the public service; medical professionals; teachers; agricultural workers; workers engaged in domestic work; workers in export processing zones (EPZs) or enterprises/industries with EPZ status; migrant workers; workers of all ages; and workers in the informal economy. However, it cannot be exercised by categories of workers subject to the formation of committees and associations (Ministerial Decree No. 135/2004 for the establishment of labour committees in private sector companies, in line with sections 108-109-110 of the Labour Law No. 35/2003).</p>
			Special attention to particular situations	<p>2008 AR: The GFOTU indicated that it has been working with NGOs on promoting women participation in trade unions and even to establish a union for working women in Oman.</p> <p>2005 AR: According to the Government: Women.</p> <p>2003 AR: According to the Government: People with disabilities and persons with special needs.</p>
			Information/Data collection and dissemination	<p>2007 AR: According to the Government: the Directorate of Inspection collects information and data on the PR.</p> <p>According to the Government: There is a lack of information and data on the PR.</p>
		At international level	According to the Government: There are no particular restrictions on the international affiliation of employers' and workers' organizations.	

	Monitoring, enforcement and sanctions mechanisms	<p>2009 AR: According to the Government: Some 90 new labour inspectors have been trained on the principle and right and a Labour Inspection Guide has been edited and printed.</p> <p>2008 AR: According to the Government: Ministerial Decision No.24/2007 was issued relating to the establishment of trade unions and the GFOTU.</p> <p>2000-2005 ARs: According to the Government:</p> <ul style="list-style-type: none"> -The Labour Law has legalized the right to establish trade unions, and the committees only register themselves at the Ministry of Labour after being formed. The establishment of joint committees of employers and workers in enterprises with significant workforces can play a monitoring and defensive role in relation to the PR. -The Ministry of Civil Service settles labour disputes concerning workers in the civil service, in accordance with the Service Regulations promulgated by Sultan Decree No. 8/80 (1982). These regulations provide for the establishment of Workers' Committees to deal with personnel questions and the right to submit complaints. - Inspection/monitoring mechanisms have been implemented. - The PR is enforced through law, collective agreements, free dispute settlement procedures and tripartite consultations at all levels. - In instances where the Government finds that this PR has not been respected, tripartite discussions free dispute settlement procedures are held by the social partners. Measures are taken to ensure respect for this PR.
	Involvement of the social partners	<p>2009 AR: According to the OCCI: Tripartite committees have been established in Oman.</p> <p>2001-2001 ARs: According to the Government: Employers' and workers' organizations have been involved in: (i) training and awareness programmes, (ii) decision-making process; (iii) improving labour market conditions and (iv) promoting career development.</p>
	Promotional activities	<p>2009 AR: According to the Government: Some 90 new labour inspectors have been trained on the principle and right and a Labour Inspection Guide has been edited and printed.</p> <p>2008 AR: The Government indicated that several tripartite seminars and trainings have been organized in collaboration with ILO, in particular the 5th ILO/Gulf Cooperation Council (GCC) Regional Seminar on the ILO Declaration and International Labour Standards in Oman. Moreover, training programmes are being undertaken jointly with USAID in order to enhance the efficiency of manpower. It also added that a labour inspection had been undertaken and several training programmes for workers will be organized in 2007 in conjunction with ILO, such as the tripartite workshop on dispute settlement scheduled for the 20 June 2007. The GFOTU indicated that it has been working with ILO this year to implement a project on the creation of trade unions and to finalize the constitution of the General Federation of Oman Trade Unions. It has furthermore been working with NGOs on promoting women participation in trade unions and even to establish a union for working women in Oman. The GFOTU also participated as a social partner in number of tripartite activities organized by the Arab Labour Organization (ALO).</p> <p>2007 AR: According to the Government: A few seminars were organized to make social partners about their rights and obligations as stated in the amendment. Moreover, tripartite activities were organized in Oman with the support of the Arab Labour Organization (ALO). The Government, the OCCI and the MOWC referred to their participation in the Fourth ILO Gulf Cooperation Council (GCC) Regional Workshop on the ILO Declaration and International Labour Standards held in Kuwait City in April 2006.</p> <p>2005 AR: The Government reported on frequent training and awareness-raising activities on the 2003 Labour Law, participation in programmes and symposia of training conferences, and publication of a series of public information pamphlets including on labour disputes.</p>

	Special initiatives/Progress	<p>2009 AR: According to the OCCI: Tripartite committees have been established in Oman.</p> <p>2007 AR: According to the Government: After the amendment of the Labour Law, the Joint Committees have become trade unions and the Main Omani Workers' Committee is renamed into the Omani General Labour Federation. Moreover, trade unions have been established in 40 companies.</p> <p>2006 AR: According to the Government: Under the 2003 Labour Law, 23 Workers' Committees have been established in 23 companies and they have elected a Main Omani Workers' Committee.</p> <p>2004-2005 ARs: According to the Government: The new Labour Law in 2003 and the establishment of committees in each organization.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2007 AR: The OCCI mentioned its lack of capacity building and training on the ILO Declaration and its follow-up.</p>
		Workers' organizations	<p>2009 AR: The ITUC reiterated its observations made under the 2008 AR concerning Oman, in particular: (i) restrictions on forming trade unions (at least 25 employees, despite the size of the enterprise); (ii) legal monopoly by a single trade union confederation (the General Federation of the Sultanate of Oman – GFOTU); and (iii) restrictions on the right to strike (with a three-week notice).</p> <p>2008 AR: The GFOTU indicated the following challenges: (i) promoting the culture of trade unionism in Oman between workers and employers still needs to be strengthened; (ii) capacity building and training of workers and trade unions members on the Declaration Follow-up is lacking in Oman; (iii) tripartite discussion in all work related issues has not yet been applied; (iv) trade union leadership nationally and internationally is still lacking; (v) skills for collective bargaining amongst trade union members should be raised and (vi) the participation and involvement of women in the trade union activities is still weak.</p> <p>According to the ITUC: (i) a decree promulgated on 8 July 2006 grants workers the right to form trade unions however the reference to the "General Federation of the Sultanate of Oman" implies a monopoly with a single trade union federation; (ii) a decree of 31 October 2006 authorizes collective bargaining and peaceful strike action by workers if it is supported by an absolute majority of the workforce; and (iii) half of Oman's workers are migrant workers and they represent a cheap and vulnerable source of labour.</p> <p>2007 AR: The MOWC also mentioned its lack of capacity building and training on the ILO Declaration and its follow-up.</p> <p>According to the ICFTU: The law still does not recognise the right to form unions and to bargain collectively; (ii) strikes are not prohibited anymore but the right to strike is not clearly recognized.</p> <p>2006 AR: According to the Main Omani Workers' Committee: Oman and countries of the Gulf Cooperation Council (GCC) need some time to organize themselves and adapt their structures progressively to freedom of association and the effective recognition of the right to collective bargaining.</p> <p>The ICFTU raised the following challenges: (i) the Labour Law, 2003, does not allow workers to form trade unions but they can form representational committees; (ii) the Labour law does not apply to members of the armed forces, security and government personnel, or domestic workers; (iii) the right to collective bargaining is still not recognised under the new law; (iv) the joint labour-management committees do not appear to be effective.</p> <p>2000-2005 ARs: The ICFTU raised the following challenges: (i) trade union rights are being violated; (ii) the Government's position on strikes is not clear; (iii) there is a binding arbitration for solving labour disputes; (iv) there is no collective bargaining and (v) joint labour-management committees are not efficient.</p>

	According to the Government	<p>2009 AR: According to the Government: There is a need to recruit more labour inspectors to strengthen the labour inspection services.</p> <p>2008 AR: The Government reiterated the same challenges mentioned in the 2007 and 2005 ARs.</p> <p>2007 AR: According to the Government: Lack of capacity of employers' and workers' organizations to understand their obligations, especially concerning collective bargaining.</p> <p>2003-2005 ARs: According to the Government: The main difficulties encountered in realizing the PR in Oman are as follows: (i) lack of public awareness and/or support; (ii) social and economic circumstances; and (iii) lack of capacity of workers' organizations.</p> <p>2005 AR: In response to the ICFTU's observations, the Government made the following comments: In the 2003 Labour Law, the Civil Service Law and the Laws on employment in the armed forces deal with issues related to employment and workers' rights in relation to the PR. The 2003 Labour Law does not mention prohibition of strikes and any punishment in case of strike. In addition, Chapter VIII (sections 104-107 of the 2003 Labour Law) deals with solving labour disputes. As regard collective bargaining, the establishment of representative committees will give incentive to workers to discuss issues related to employment with employers and the Government to achieve collective bargaining requirements.</p> <p>2002 AR: In response to the ICFTU's observations, the Government made the following comments: Authorization is provided to establish associations for workers and employers in enterprises employing 50 workers or more. It is looking forward to enforce the new Labour Code in 2004, in line with the PR. The Labour Law does not determine wages and salaries, but only provides for the minimum wage, by virtue of Ministerial Order No.222/98. In the private sector, wages are determined by both parties, and contracts should be in conformity with the Labour Laws and the Directives of the Government in this regard. Furthermore, the Sultanate enjoys benefits that do not justify strikes - which can be detrimental to the country.</p>
TECHNICAL COOPERATION	Request	<p>2009 AR: According to the Government: The ILO should maintain and strengthen its technical support with the introduction of a training component on the use of the Labour Inspection Guide. Moreover, the ILO Decent Work Country Programme should be continued.</p> <p>According to the OCCI: The ILO's support is needed to train officials on labour-related issues.</p> <p>2008 AR: According to the Government: ILO technical assistance has been provided in carrying out seminars and training and it hopes that it will be sustained.</p> <p>The GFOTU requested ILO technical assistance for the capacity building of trade union members in Oman. Furthermore, field visits and best practices from other international federation of trade union are needed.</p> <p>2007 AR: According to the Government, the OCCI and the MOWC: ILO technical cooperation would be needed to organize a national tripartite workshop on International Labour Standards and the ILO Declaration. Moreover, employers' and workers' organizations need special training on their roles in the Declaration Follow-up.</p> <p>2006 AR: According to the Main Omani Workers' Committee: A need for technical cooperation to facilitate the realization of the PR exists in establishing Workers' Committees and raising awareness on the role of the Workers' Committees in promoting the principle and right and other fundamental principles and rights at work in line with the 1998 ILO Declaration.</p> <p>2005 AR: According to the Government: There is a need for technical cooperation to facilitate the realization of the PR in the following areas, in order of priority: 1) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle; 2) strengthening data collection and capacity for statistical analysis; 3) strengthening tripartite social dialogue and 4) sharing of experiences across countries/regions.</p> <p>2002 AR: The Government stated that the assistance of the ILO and the Arab Labour Organization (ALO) were needed in carrying out studies to support the organization and development of the labour force in the country.</p>

	Offer	<p>ILO, GCC, ALO</p> <p>2007 AR: According to the Government: A continuous dialogue is being held between Oman and the ILO. In this respect, a team of ILO experts visited Oman in April 2006, and a report on the Labour Law amendment was prepared. The ALO has supported some tripartite activities in Oman.</p> <p>2006 AR: According to the Government: The Plan of Joint Activities 2004-05 concluded between the Council of Ministers of Labour and Social Affairs in the GCC States and its Executive Bureau and the ILO includes the fundamental principles and rights at work as a top priority.</p>
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS		<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) observed that the Annual Review had made it possible to highlight and follow up country situations that required greater attention, and that some countries, such as the Gulf States (as well as China and new member States, in particular in the South Pacific), had made important efforts during this process. However, according to them, more needed to be done. The IDEAs welcomed the efforts made by Oman (new regulations on collective bargaining and the right to strike) in implementing the principle and right and asked Oman (and other countries) to complete its legal review process to remove the obstacles to ratification of C.87 and C.98. They drew, however, the attention to the practice in some countries where only one official trade union is allowed, including Oman, and recalled in this regard the following: "the right to official recognition is an essential aspect of the right to organize as it allows employers' and workers' organizations to be in a position to play their roles efficiently. Furthermore, any government intervention in employers' and workers' organizations' internal affairs (right to establish and join organizations of their own choosing, without distinction whatsoever and without previous authorization, right to draw up internal constitutions and rules, right to elect their representatives in full freedom, etc.) constitutes interference in the functioning of these organizations, which is a denial of the principle and right". The IDEAs finally acknowledged the high number of promotional activities concerning the PR in the Gulf States (and some other countries), and encouraged the Office to maintain its efforts to support these activities. (Cf. Paragraphs 12, 33, 34 and 36 of the 2008 AR Introduction – ILO: GB.301/3).</p> <p>2006 AR: The IDEAs observed the following: "It is important to note that the majority of workers in some Gulf States are migrant workers. Therefore, while we note that certain measures have been reported relating to this principle [...] we stress that the principle should be given full effect as regards all the workers present in these countries, including migrant workers, if these countries are to progress meaningfully in this area" (Cf. Paragraph 45 of the 2006 AR Introduction – ILO: GB.295/5).</p> <p>2005 AR: The IDEAs listed Oman among the countries where progress was being made under the Annual Review on the promotion of freedom of association and the effective recognition of the right to collective bargaining (paragraph 12 of the 2005 Annual Review Introduction). Furthermore, the ILO Declaration Expert-Advisers noted with interest the continuing efforts made by the countries of the Gulf Cooperation Council (GCC) (Cf. Paragraph 148 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2004 AR: The IDEAs stated that they were encouraged by the continuing steps taken by countries of the Gulf Cooperation Council (GCC) in relation to this PR, but noted that there was a long way to go and much to do. They further indicated that the Gulf Cooperation Council States were providing more information on the PR, but not enough on the other three PRs. This would help to illustrate the link between all four PRs. The IDEAs also wished that the positive measures taken by countries in the Gulf Cooperation Council (GCC) be expanded upon (Cf. Paragraphs 29 and 84 of the 2004 Annual Review Introduction – ILO: GB.289/4).</p> <p>2003 AR: The IDEAs commended Oman for its continuing dialogue with the Office (Cf. Paragraph 4 of the 2003 AR Introduction – ILO: GB.286/4).</p> <p>2002 AR: The IDEAs recommended that, with a view to a more in-depth discussion of certain aspects of the Introduction, the Governing Body invite clarifications from Oman in relation to the continuation of steps undertaken in the country, in cooperation with the Office, concerning the principle of freedom of association and effective recognition of the right to collective bargaining. Furthermore, they acknowledged the high-level dialogue and agreement on a plan of activities between the Office and the Government (Cf. Paragraphs 41 (b) and 82 of the 2002 AR Introduction – ILO: GB.283/3/1).</p> <p>2001 AR: The IDEAs hoped that the Governments of Oman would continue a dialogue with the Office regarding the ways in which the PR could be achieved (paragraph 77 of the 2001 Annual Review Introduction). They also recommended to the governing body that further information be requested from the Government of Oman in relation to efforts made to promote the principle and right (Cf. Paragraph 30 (b) (ii) of the 2001 Annual Review Introduction – ILO: GB.280/3/1).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS		NIL



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: QATAR

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, but no change reports for the 2001, 2004 and 2009 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Qatar Chamber of Commerce and Industry (QCCI), the Qatar Petroleum Workers' Committee (QPWC) and the General Union of Workers of Qatar (GUWQ) through consultations and communication of Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2007 AR: Observations by the QCCI.	
	Workers' organizations	2009 AR: Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the QPWC. Observations by the TUC. 2007 AR: Observations by the QPWC. Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the QPWC. Observations by the ICFTU. 2005 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Qatar has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).
		Ratification intention	YES, since 2002, for C.87 and C.98. 2007 AR: The Government stated that it was looking forward to reaching the legal and practical level that would allow the ratification of both Conventions. Accordingly, it is cooperating with the ILO for the realization of the ILO Declaration. 2002 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (2001), the Government intended to ratify C.87 and C.98.

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	NIL	
		Policy, legislation and/or regulations	<p>• Legislation</p> <p>The Labour Code was adopted by Law No. 14 (2004), which entered into force on 6 January 2005. Chapters 12, 13 and 14 provide for the setting up of workers' organizations, the Confederation of Workers of Qatar and for the right to collective bargaining as well as the right for joint committees, joint agreements and the collective settlement of disputes. Law No. 12 (2004) on Associations and Private Institutions was also adopted.</p> <p>The new Labour Code, and in particular part XII, also grants workers the right to form certain associations in establishments not employing less than hundred workers (section 116), which are not called trade unions, but workers committees. Section 118 of the law provided also that "The Workers' Organizations shall assume the taking care of the interests of their members and protection of their rights and their representation in all matters related to the affairs of the work."</p> <p>2003 AR: According to the Government: Legal reform is implemented in order to realize the principle and right (PR).</p>	
		Basic legal provisions	(i) The Labour Code: Law No. 14 (2004) (Chapters 12, 13 and 14); (ii) the Law No. 12 (2004) on the Associations and Private Institutions; and (iii) the Law on Societies.	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	<p>2005 AR: The legislation has changed since the adoption of the new Labour Code in January 2005. Prior government authorization is necessary to establish employers' organizations but not to conclude collective agreements. The PR can be exercised by all categories of employers.</p> <p>2003-2004 ARs: Freedom of association (FOA) cannot be exercised at enterprise, sector/industry, national and international levels by all categories of employers. The right to collective bargaining at enterprise level can be exercised by all categories of employers.</p>

			For Workers	<p>2006 AR: Legislation has been elaborated to regulate the creation of unions at enterprise level in both the private and public sectors. Ministerial decrees have been issued providing for the preliminary terms and procedures for the setting up of workers’ organizations.</p> <p>2005 AR: Prior government authorization is necessary to establish workers’ organizations but not to conclude collective agreements. Workers can exercise the PR at enterprise, sector/industry levels. The PR can be exercised by the following categories of persons: medical professionals, teachers, workers in export processing zones (EPZs) or enterprises/industries with EPZs status, migrant workers and workers of all age.</p> <p>2003-2004 ARs: Prior government approval is necessary to exercise the PR. FOA cannot be exercised at enterprise, sector/industry, national and international levels by all categories of workers. The right to collective bargaining at enterprise level can be exercised by the following categories of persons: (i) medical professionals; (ii) teachers; workers in export processing zones (EPZs) or enterprises/industries with EPZs status; (iii) migrant workers; and (iv) workers of all ages. However, it cannot be exercised by all workers in the public service, agricultural workers, workers engaged in domestic work, and in the informal economy.</p>
			Special attention to particular situations	NIL
			Information/ Data collection and dissemination	According to the Government: Lack of information and data.
			At international level	<p>2006 AR: According to the Government: FOA can be exercised at the international level. The Confederation of the Workers of Qatar can join any international organization active in the sphere of workers’ organizations (article 123).</p> <p>2000-2005 ARs: According to the Government: FOA and the right to collective bargaining cannot be exercised at international level.</p>
		Monitoring, enforcement and sanctions mechanisms	<p>2005 AR: According to the Government: The new Labour Code (2004) contains detailed provisions to enforce the PR and provides for sanction in cases of breach. Moreover, additional civil, administrative and penal sanctions exist.</p>	
	Involvement of the social partners	<p>2007 AR: The Government stated that progress had been made especially thanks to the improvement of industrial relations and the increasing dialogue between employers and workers.</p> <p>2002 AR: According to the Government: The Labour Code allows for the setting up of consultative committees composed of employers’ and workers’ representatives, with a view to promoting cooperation between them.</p>		

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	Promotional activities	<p>2008 AR: According to the Government: The Labour Department participated in a conference held in Tunis, in February 2007, concerning trade union freedoms and rights in the Arab world. This conference was jointly held by the Arab Labour Organization and the ILO.</p> <p>The Government and the QPWC also indicated that they have participated in the 5th ILO/Gulf Cooperation Council (GCC) Regional Seminar on the ILO Declaration and International Labour Standards in Oman.</p> <p>2007 AR: According to the Government: (i) Various occasions and events are seized to present the Declaration and related Conventions well-known; and (ii) officials working in the field of international relations and labour standards have participated in courses, seminars and symposia on the Declaration and International Labour Standards. In 2006, the Government participated in the ILO/Gulf Cooperation Council (GCC) Fourth regional workshop on the Declaration and its follow-up which was held in the framework of cooperation between the International Labour Office and the Executive Bureau of the Ministers of Labour and Social Affairs in. A female official in the Department of Labour has been sent to Geneva to attend a course on Standards at ILO headquarters.</p> <p>The QCCI and the QPWC referred to their participation in the ILO/Gulf Cooperation Council (GCC) Fourth Regional Workshop on the ILO Declaration and International Labour Standards held in Kuwait City in April 2006.</p> <p>2006 AR: According to the Government: A promotional manual for migrant workers in Qatar has been prepared.</p> <p>2003-2005 ARs: According to Government: Awareness-raising activities are envisaged.</p>	
	Special initiatives/Progress	<p>2008 AR: According to the Government: A labour relations service has been established in the Labour Department of the Ministry of Civil Service Affairs and Housing. It is expected that this service will contribute to enhancing dialogue and cooperation with workers, employers, workers' committees and joint committees in enterprises.</p> <p>2007 AR: According to the Government: Progress has been made especially thanks to the improvement of industrial relations and the increasing dialogue between employers and workers. The new Labour Code is a qualitative move in relation to the principle and right. For the first time it contains a specific chapter under the heading "Workers' Organizations" concerning the provisions governing the establishment of workers' committees at enterprise, sectorial and national levels. Other chapters address collective bargaining, collective agreements and collective disputes. Article 127 of this Labour Code provides that the scope of collective bargaining and collective agreements shall embrace any matters relating to work. Moreover, the Law on Societies and Private Associations was promulgated in 2004. The second chapter of this law contains specific provisions concerning the organization rules for the establishment and functioning of professional associations. Indeed, a number of such associations have been already established as those of journalists, engineers, lawyers and physicians.</p> <p>2006 AR: According to the Qatar Petroleum Workers' Committee: The Workers' Committees are being progressively established.</p>	
	According to the social partners	Employers' organizations	<p>2007 AR: According to the QCCI: Lack of social dialogue on the PR. The QCCI considered that tripartite discussions should be organized with a view to understand better how to respect, promote and realize the ILO Declaration in Qatar.</p>

		<p>Workers' organizations</p>	<p>2009 AR: The ITUC reiterated the observations it made under the 2008 AR concerning Qatar, in particular as regards: (i) restrictions on the right to join union on government workers and non-Qatari nationals, but also concerning the minimum number of 100 members to form a workers' committee, and that the only trade union allowed is the General Union of Workers of Qatar (GUWQ); (ii) the right to collective bargaining is heavily curtailed by Government's control over the rules and procedures for bargaining; (iii) severe limitations and obstacles make it extremely difficult to go on strike within the law, and civil servants and domestic workers cannot strike; and (iv) repeated strikes have been organized in Qatar.</p> <p>2008 AR: The ITUC raised the following additional challenges: (i) the law allows trade unions to carry out collective bargaining, but that right is heavily curtailed by the government's control over the rules and procedures for bargaining; (ii) the right to strike is still restricted; and (iii) most migrant workers are employed in the private and semi-private sectors, where they often fall victim to abuse from their employers.</p> <p>2007 AR: According to the QPWC: Lack of social dialogue on the PR. The QPWC also supported the view that tripartite discussions should be organized with a view to a better understanding on how to respect, promote and realize the ILO Declaration in Qatar.</p> <p>2006-2007 ARs: The ICFTU raised the following challenges: (i) the 2004 Labour Code allows for the formation of free trade unions but only for Qatari nationals (one quarter of the labour force) and is restricted; (ii) unions and the right to collective bargaining were still banned in Qatar in 2004; (iii) the right to strike is recognised, but is very difficult to exercise within the new law (mostly because of the compulsory arbitration by the labour department prior to any strike action) or is restricted for categories of workers such as domestic workers and civil servants.</p> <p>2000-2005 ARs: According to the ICFTU: (i) even though workers' committee can be set up, trade unions do not exist in Qatar; (ii) collective bargaining is prohibited and the employers generally set wages, (iii) the right to strike is restricted (domestic workers are denied this right).</p>
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<p>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>According to the Government</p>	<p>2009 AR: In response to the ITUC's observations, the Government indicated the following: (i) Restriction on the right to form or join unions: The standing Constitution of the State of Qatar establishes the essential foundations of the society, embodies the popular participation in decision-making and guarantees rights and freedoms. Under articles 44, 45 and 47, Chapter III of the Constitution, concerning the General Rights and Duties, the right of assembly, freedom to establish societies, and freedom of expression, scientific research, press, printing and publishing are assured. The Constitution also establishes new rules regulating the relationship between workers and employers, based on social justice. The Constitution guarantees as well freedom of expression and association as two essential rights that give workers' organizations total freedom to work. The State of Qatar has taken many practical and executive steps in order to permit the establishment of workers' organizations. The New Labour Law issued by Law No. 14 of 2004, recognizes in Part XII the right of workers to establish with total freedom their associations in the enterprises where they work. It authorizes workers working in an enterprise to form a workers' committee, and authorizes the workers' committees in the enterprises engaged in one trade or industry or similar or interrelated trades or industries to form a general committee from amongst themselves to be named the General Committee for the Workers of the trade or industry. It also authorizes the general committees of the workers of the various trades and industries to form amongst themselves a general union to be named the General Union of the Workers of Qatar. To implement this right, the Minister of Civil Service Affairs and Housing issued Circular No. 10 of 2006, concerning the development of models of workers' organizations statutes in order to pave the way for workers to submit applications for the establishment of their organizations mentioned above. This Circular guarantees also the right of non-Qatari workers to adhere to the workers' committee. The Ministry provides the necessary support and guidance for workers to enable them to exercise the right to organize; (ii) Restriction on the right to bargain collectively: The Labour Law gives employers and workers the right to establish joint committees which shall deal with the study and discussion of all matters related to the work in the enterprise. The workers' committee, if there is one in the enterprise, shall assume the nomination of the workers' representatives in the joint committee from amongst its members. If there is no workers' committee in the enterprise, the workers therein shall nominate their representatives in the joint committee through direct free election (section 125). The Labour Law gives employers and workers also the right to conduct collective negotiation and conclude joint agreements on all matters related to work (section 127); (iii) Restrictions on the right to strike: The Labour Law provides also in article 120 for the workers' right to go on strike if amicable settlement of the dispute between them and the employer becomes impossible, provided that three-fourths of the members of the General Committee of the workers of the trade or industry agree to go on strike. This condition concerns the strike vote and does not contradict Article 3 of the Convention No. 87. In addition, it does not consider the majority as a hindrance to the exercise of the right to strike; and (iv) Trade unions' rights in practice/repeated strikes: A body was established in the Labour Department, called "the Labour Inspection Body". This body inspects enterprises and private institutions on a regular basis and without prior notification in order to supervise the application of laws and decisions concerning labour and the protection of the workers' rights, including supervising the extent to which the companies respect the timeliness of the payment of wages in accordance with the law. The body detects all contraventions against any male or female worker and refers them to the competent authorities. The Labour Relations Section of the Labour Department also examines all the workers' claims submitted to it and tries to settle them amicably. If the amicable settlement proves impossible, the Section refers the claim in question to the competent court to settle it through the ad hoc workers' services in that court. It is worth noting that the strike rate has decreased remarkably since the role of the Labour Inspection Body and the regular supervision of the housing and wages, have been strengthened. The Labour Department has also a hotline to receive workers claims.</p> <p>2007 AR: The Government acknowledged the lack of social dialogue on the PR and mentioned that tripartite discussions should be organized with a view to better understanding how to respect, promote and realize the ILO Declaration in Qatar.</p> <p>In a late response to the ICFTU's observations, the Government indicated that the Labour Code provides for the workers' organizations' right to bargain collectively and conclude joint agreements on labour related matters. In the absence of an enterprise workers' committee, the workers shall select their representative to the Joint Committee through free and direct elections (Section 125).</p>
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TECHNICAL COOPERATION	Request	<p>2008 AR: The QPWC reiterated the same request mentioned in the 2007 AR.</p> <p>2007 AR: According to the Government, the QCCI and the QPWC, ILO technical cooperation is needed to promote a better understanding of the ILO Declaration in Qatar.</p> <p>2006 AR: According to the Government: Needs for technical cooperation to facilitate the realization of the PR in Qatar exist in the following areas, in order of priority: (1) strengthening data collection and capacity for statistical analysis; (2) in case of establishment of trade unions, there will be a need for awareness raising and training. Moreover, the Government would appreciate continued technical cooperation with the ILO in following up and implementing the Declaration on Fundamental Principles and Rights at Work, including the PR.</p> <p>2006 AR: According to the Qatar Petroleum Workers' Committee: Once workers' committees are generalized in the country, the ILO technical cooperation would be needed on freedom of association and other fundamental principles and rights at work.</p> <p>2003 AR: According to the Government: Needs for technical cooperation to facilitate the realization of the PR in Qatar exist in the following areas, in order of priority: (1) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR; (2) strengthening data collection and capacity for statistical analysis; and (3) legal reform (labour law and other relevant legislation). And, in case of establishment of trade unions, there will be a need for awareness raising and training. The Government would appreciate continued technical cooperation with the ILO in following up and realizing the Declaration on Fundamental Principles and Rights at Work, including the PR.</p>
	Offer	ILO, GCC

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) observed that the Annual Review had made it possible to highlight and follow up country situations that required greater attention, and that some countries, such as the Gulf States (as well as China and new member States, in particular in the South Pacific), had made important efforts during this process. However, according to them, more needed to be done. The IDEAs also encouraged Qatar to initiate the necessary labour law reform to remove the obstacles to ratification of C.87 and C.98. They acknowledged the high number of promotional activities concerning the PR in the Gulf States (and some other countries), and encouraged the Office to maintain its efforts to support these activities. Finally, the IDEAs noted that restrictions on the right to organize of certain categories of workers in Qatar (and some other countries), such as migrant workers, domestic workers, agricultural workers and workers in the informal economy, were not compatible with the realization of this principle and right” (Cf. Paragraphs 12, 32 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed Qatar among the countries that have been indicating their intention to ratify C.87 and C.98 for several years, with no indication that progress has been made. They also noted with interest that some progress had been achieved in the Gulf States regarding the right of workers and employers to organize freely and voluntarily, without being subjected to control by their governments (Cf. Paragraphs 33 and 36 of the 2007 Annual Review Introduction –ILO: GB.298/3).</p> <p>2005 AR: The IDEAs listed Qatar among the countries where progress was being made under the Annual review in the promotion of freedom of association and the effective recognition of the right to collective bargaining. Furthermore, the ILO Declaration Expert-Advisers noted with interest the continuing efforts made by the countries of the Gulf Cooperation Council (Cf. Paragraphs 12 and 148 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2004 AR: The IDEAs stated that they were encouraged by the continuing steps taken by countries of the Gulf Cooperation Council (GCC) in relation to this PR, but noted that there was a long way to go and much to do. They further indicated that the Gulf Cooperation Council States were providing more information on the PR, but not enough on the other three PRs. This would help to illustrate the link between all four PRs. The IDEAs also wished that the positive measures taken by countries in the Gulf Cooperation Council (GCC) be expanded upon (Cf. Paragraphs 29 and 84 of the 2004 Annual Review Introduction – ILO: GB.289/4).</p> <p>2003 AR: The IDEAs commended Qatar for its continuing dialogue with the Office (paragraph 4 of the 2003 Annual Review Introduction). In light of requests Myanmar for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, the IDEAs called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field (Cf. Paragraph 74 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p> <p>2002 AR: The IDEAs recommended that, with a view to a more in-depth discussion of certain aspects of the Introduction, the Governing Body invite clarifications from Qatar in relation to the continuation of steps undertaken in the country, in cooperation with the Office, concerning the principle of freedom of association and effective recognition of the right to collective bargaining. Furthermore, they acknowledged the high-level dialogue and agreement on a plan of activities between the Office and the Government (Cf. Paragraphs 41 (b) and 82 of the 2002 Annual Review Introduction – ILO: GB.283/3/1).</p> <p>2001 AR: The IDEAs hoped that the Government of Qatar would continue a dialogue with the Office regarding the ways in which the PR could be achieved They also recommended to the governing body that further information be requested from the Government of Qatar in relation to efforts made to promote the principle and right (Cf. Paragraphs 30 (b) (ii) and 37 of the 2001 Annual Review Introduction – ILO: GB.280/3/1).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: SAUDI ARABIA

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , except for the 2003 Annual Review (AR). No change report under the 2009 AR.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of the Employer representative of the Council of Saudi Chambers of Commerce and Industry (SCCI), the Chairman of the Aramco Workers' Committee (AWC) and the Chairman of the Saudi Telecom Workers' Committee (STWC) through communication of Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the SCCI. 2007 AR: Observations by the SCCI.	
	Workers' organizations	2009 AR: Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the STWC. 2007 AR: Observations by the AWC. Observations by the STWC. 2006 AR: Observations by the AWC. Observations by the STWC. Observations by the International Confederation of Free Trade Unions (ICFTU). 2005 AR: Observations by the ICFTU. 2004 AR: Observations by the ICFTU. 2003 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Saudi Arabia has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).
		Ratification intention	Under consideration, since 2000, for C.87 and C.98. 2008 AR: The Government indicated that it had no intention at this time to ratify C.87 and C.98. The SCCI and the STWU expressed their support to the ratification of C.87 and C.98. 2000 AR: The Government stated that it was examining the possibility to ratify the remaining fundamental Conventions.

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

	Recognition of the principle and right (prospect(s), means of action, main legal provisions)	Constitution	YES According to the Government: The Constitution of the Kingdom of Saudi Arabia, represented by the Sharia (Islamic rules), pursues the same objectives as those of freedom of association and collective bargaining.		
		Policy, legislation and/or regulations	<ul style="list-style-type: none">• Legislation The Labour laws relate to the principle and right (PR).• Regulations Decree No. 12 dated 2 April 2001 approving rules for the establishment of labour committees at the enterprise level relate to the PR.		
		Basic legal provisions	(i) Constitution of the Kingdom of Saudi Arabia (Islamic Sharia); (ii) Labour laws and (iii) Decree No. 12 dated 2 April 2001 approving rules for the establishment of labour committees at the enterprise level.		
		Judicial decisions	NIL		
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	NIL	
			For Workers	NIL	
			Special attention to particular situations	NIL	
			Information/Data collection and dissemination	NIL	
		At international level	NIL		
	Monitoring, enforcement and sanctions mechanisms	2004 AR: According to the Government: Decree No. 12 dated 2 April 2001 opens the possibility of establishing one labour committee in each enterprise, consisting of Saudi workers employed in the enterprise. 2001 AR: According to the Government: The <i>Shura</i> Council (the Consultative Council) had recently approved a proposal on a mechanism for workers' organizations, which suits the conditions and particularities of the Kingdom of Saudi Arabia. 2000 AR: According to the Government: In the case of a conflict between an employer and a worker on a specific subject, the Labour Inspector plays the role of an intermediary providing advice and guidance and trying to bring about an amicable settlement of the dispute. The settlement is therefore consolidated and the Labour Inspector supervises its application.			
Involvement of the social partners	2004 AR: According to the Government: Information meetings were held to familiarize workers and employers with the fundamental principles and rights at work, and the role of the workers' committees in enterprises in this regard.				

	Promotional activities	<p>2007 AR: According to the Government: Some activities were organized to promote the ILO Declaration and the development of workers' committees all over the country. Moreover, the Government took part in workshops on small and medium enterprises (SMEs) held in Oman in 2006.</p> <p>The Government, the SCCI and the AWC mentioned their participation in the ILO/Gulf Cooperation Council (GCC) on the Declaration Follow-up organized in Kuwait City in April 2006.</p> <p>According to AWC: Some progress has been made in the establishment of workers' committees in Saudi Arabia.</p> <p>According to STWC: The number of workers' committees has slightly increased, but the STWC is working on the establishment of additional ones.</p> <p>2004-2005 ARs: According to the Government: Several information meetings on the role of workers' committees in enterprises were held in different regions, and the convening of a seminar on social dialogue is being discussed with the ILO.</p>	
	Special initiatives/Progress	<p>2006 AR: The Government indicated that it is closely monitoring the creation of labour committees in enterprises. Recently, a number of committees were established in several enterprises and a number of other enterprises are setting up new labour committees.</p> <p>According to the ICFTU: Four workers' committees were established in 2004. A draft Bill revising the Labour Law was sent to the Council of Ministers for adoption in September 2004; it would also cover domestic workers.</p> <p>2005 AR: According to the Government: The setting up of several workers' committees in a number of establishments, and two committees chairpersons have participated for the first time in the 92nd Session of the International Labour Conference held in June 2004. The Government expects to establish more committees in the future.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	NIL

		<p>Workers' organizations</p> <p>2009 AR: The ITUC reiterated the observations it made under the 2008 AR concerning Saudi Arabia, in particular as regards: (i) the absence of trade union rights – the new Labour Code does not grant the right to organize, bargain collective or strikes; (ii) restrictions to form a workers' committee (a minimum number of 100 members) the activities of which are heavily circumscribed (they can only make recommendations on improving working conditions, health and safety standards, and increasing productivity); (iii) the scope of collective associations (taxi drivers, computer experts, economists and engineers) is very limited; (iv) a proposal to set up a workers' rights panel was rejected; and (v) despite the ban on strikes, there have been occasional work stoppages in recent years usually to protest against non-payment of wages.</p> <p>2007-2008 ARs: The ICFTU and the ITUC raised the following additional challenges: The 2005 labour law still does not give workers the right to organise, bargain or strike, the law still only allows for workers' committees. Moreover, the revised Labour Code, which entered into force in April 2006, does not grant workers the right to bargain collectively. It was furthermore drafted without any input from workers' representatives. Wages are fixed by employers, based on the nature of work and the nationality of the worker. Therefore, Saudi and western workers are paid at least 30 to 50 per cent more than other foreign workers.</p> <p>2006 AR: Observations by the Aramco Workers' Committee (AWC): (i) the establishment of workers' committees is supported by the Government, but some enterprises are very slow in establishing these committees; (ii) there is also a need to share experience on the development of freedom of association (FOA) and other fundamental principles and rights at work (FPRW) with unions of other countries.</p> <p>– Observations by the Saudi Telecom Workers' Committee (STWC): (i) there is a need to speed up the process of establishment of workers' committees in enterprises where they do not exist; (ii) there is also a need to educate these committees on FOA issues and other FPRW and the STWC is supporting this process.</p> <p>– The ICFTU raised the following additional challenges: (i) in spite of positive developments, such as the creation of workers' committees, trade unions and strikes are banned.</p> <p>2005-2006 ARs: Observations by the ICFTU: (i) only one committee can be formed in each qualifying enterprise and it must have between three and nine members; (ii) only Saudi workers may be members of a workers' committee, and these workers must be older than 25 years and have worked for more than two years at the same enterprise; (iii) the main tasks of these committees are limited; (iv) the law allows the administrative dissolution of workers' committees.</p> <p>2000-2002 ARs: The ICFTU raised the following challenges: (i) trade unions and strikes are banned by royal decree; (ii) collective bargaining is forbidden; (iii) anyone trying to form a union can be sacked, jailed, or in the case of migrant workers, expelled from the country; (iv) there are no mechanisms to promote the aims set out in the Sharia.</p>
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	<p>According to the Government</p>	<p>2009 AR: In response to the ITUC's observations, the Government noted the following: (i) ITUC's observations are repeated ones, and the Government had previously submitted its view on them; and (ii) the Government is making firm steps to set up a general national committee for workers' committees. It does not want to jump these steps in order to have the work organized and to realize the required targets in accordance with international labour standards.</p> <p>2008 AR: In response to the ITUC's observations, the Government indicated the following: The Government was taking steady steps so that the workers' committees can fully play their role. The Ministry of Labour has already established a working group to visit a number of large cities in the Kingdom in order to make these committees known and sensitize workers on the importance and the need for total independence of these committees. It also held a number of meetings with several workers for this purpose. Procedures for the establishment of a national workers' committee are thus taking place in a steady and regular way with a view to reaching the committee's goals. Moreover, a number of professional groups and bodies fulfil the role of those committees and contribute to that process, such as the: (i) Saudi Economics Association; (ii) Saudi Journalists Association; (iii) Saudi Society of Certified Accountants; (iv) Saudi Commission for Health Specializations; and (v) Saudi Engineers Organization. Furthermore, no one can be dismissed, imprisoned or deported without a rightful reason. The workers' committees are simply a first step towards the creation of workers' organizations. Finally, migrant workers have the right to elect the members of the workers' committees and to submit any suggestion, point of view or complaint to the committee members. Section 11 of the Rules for the Creation of the Workers' Committees gives the Minister the right to dissolve a workers' committee only when it commits a serious violation to the provisions of these rules or offends the public security of the country, on condition that a decision in this respect is issued by the Supreme Authority for the Settlement of Labour Conflicts, as provided for in the labour regulations. Finally, it indicated that the Labour Code does not provide for any distinction on the basis of gender, religion, race or nationality. The wages in the private sector are determined according to the supply and demand rule and to the worker's competencies, capacities and experience. The wage is furthermore fixed on agreement between the worker and the employer before the arrival of the foreign worker in the Kingdom. As regards domestic workers, their conditions in the country lacked accuracy since section 7 of the Labour Code provides that the Ministry shall set, in coordination with the competent bodies, regulations concerning domestic workers and the likes to determine the relationship with their employers and the rights and obligations of both parties. In this regard, draft statutory regulations concerning domestic workers were submitted to the competent bodies for adoption. A copy of these regulations will be sent to the ILO upon their promulgation.</p> <p>2006 AR: In response to the observations by the AWC and the STWC, the Government made the following comments: (i) The Government has requested the organization of a regional seminar on Social Dialogue and the Role of Workers' Committees in Enterprises; (ii) there is a need to promote Workers' Committees; (iii) the Ministry of Labour has set up a working group to visit a number of large cities in the Kingdom in order to make these committees known and sensitize workers on the importance and the need for total independence of these committees. 13 enterprises Workers' Committees have been established in 2005, and a further 7 are in the process of formation.</p> <p>In response to the ICFTU's observations, the Government observed that: (i) the rules governing the creation of Workers' Committees provide that a Minister may only dissolve a Committee if it commits a serious violation of the rules or undermines national security; (ii) the new Labour Code provides that the Ministry shall establish special rules for domestic workers; (iii) several bodies and professional associations have been set up such as the Journalist Association's Council or the Saudi Engineer's Council; (iv) the Ministry of Labour is monitoring these cases of work suspension due to protests over wage increase.</p> <p>2005 AR: In response to the ICFTU's observations, the Government observed that: (i) four committees have been constituted to date; another four committees are being formed and the establishment of other committees is also expected.</p> <p>2000-2001 ARs: In response to ICFTU's observations, the Government made the following comments: (i) there is no applicable Royal Decree that prohibits the establishment of trade unions; (ii) the Islamic Sharia (the Constitution of the Kingdom) guarantees the achievement of objectives that go beyond those pursued by trade unions.</p>
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TECHNICAL COOPERATION	Request	<p>2008 AR: The Government and the SCCI reiterated the same request mentioned in the 2007 AR. The STWC reiterated the same requests mentioned in the 2007 AR.</p> <p>2007 AR: The Government, the SCCI and the AWC mentioned the need for ILO technical cooperation to promote the Declaration principles and rights in the country.</p> <p>According to the STWC: There is a need for workers' education to increase awareness among workers and the importance of workers' organizations and their role in improving working conditions. This step is fundamental to develop freedom of association and collective bargaining in Saudi Arabia and ILO should provide adequate training in this respect.</p> <p>ILO should also train the Government and employers' organizations so that they know how to deal with workers' organizations. This will at the same time decrease resistance to change and give to the Government and employers' organizations more acceptance to deal with workers and their organizations. All this process will help develop the capacity building of workers' organizations and their ability to be part of an initial collective bargaining and tripartite process.</p> <p>The AWC supported this view.</p>
	Offer	ILO and GCC.
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) observed that the Annual Review had made it possible to highlight and follow up country situations that required greater attention, and that some countries, such as the Gulf States (as well as China and new member States, in particular in the South Pacific), had made important efforts during this process. However, according to them, more needed to be done. The IDEAs were also concerned that the Government of Saudi Arabia (and three other governments) had indicated the current impossibility to ratify C. 87 and C.98 without further justification. (Cf. Paragraphs 12 and 29 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed Saudi Arabia among the countries that have been indicating their intention to ratify C.87 and C.98 for several years, with no indication that progress has been made (paragraph 33 of the 2007 AR Introduction). The IDEAs also noted with interest that some progress had been achieved in the Gulf States regarding the right of workers and employers to organize freely and voluntarily, without being subjected to control by their governments. (Cf. Paragraph 36 of the 2007 AR Introduction – ILO GB.298/3).</p> <p>2006 AR: The IDEAs observed the following: "It is important to note that the majority of workers in some Gulf States are migrant workers. Therefore, while we note that certain measures have been reported relating to this principle [...] we stress that the principle should be given full effect as regards all the workers present in these countries, including migrant workers, if these countries are to progress meaningfully in this area". (Cf. Paragraph 45 of the 2006 Annual Review Introduction – ILO GB.295/5).</p> <p>2005 AR: The IDEAs noted with interest the continuing efforts made by the countries of the Gulf Cooperation Council (paragraph 148 of the 2005 Annual Review Introduction). Furthermore, they listed Saudi Arabia among the countries where progress was being made under the Annual Review in the promotion of freedom of association and the effective recognition of the right to collective bargaining (Cf. Paragraph 12 of the 2005 Annual Review Introduction – ILO GB.292/4).</p> <p>2004 AR: The IDEAs mentioned that they were encouraged by the continuing steps taken by countries of the GCC in relation to this principle and right, but noted that there was a long way to go and much to do. Moreover they observed that the Gulf Cooperation Council States were providing more information on the principle of freedom of association and the effective recognition of the right to collective bargaining, but they considered that it would be useful to receive more information on the other three principles. This would help to illustrate the interlinkages among all four principles (Cf. Paragraph 85 of the 2004 Annual Review Introduction – ILO GB.289/4).</p> <p>2003 AR: The IDEAs commended Saudi Arabia for its continuing dialogue with the Office (Cf. Paragraph 4 of the 2003 Annual Review Introduction – ILO GB.286/4).</p> <p>2002 AR: The IDEAs acknowledged the high-level dialogue and agreement on a plan of activities between the Office and the Government (Cf. Paragraph 82 of the 2002 Annual Review Introduction – ILO GB.283/3/1).</p> <p>2001 AR: The IDEAs hoped in particular that the Government of Saudi Arabia would continue a dialogue with the Office regarding the ways in which the principle and right could be achieved (paragraph 77 of the 2001 Annual Review Introduction). They also recommended to the Governing Body that further information be requested from the Government of Saudi Arabia in relation to efforts made to promote the principle and right (Cf. Paragraph 30 (b) (ii) of the 2001 Annual Review Introduction – ILO GB.280/3/1).</p>	

GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL
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COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: SINGAPORE

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, since the start of the Annual Review (AR) in 2000.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Singapore National Employers' Federation (SNEF), the National Trade Union Congress (NTUC) through communication of Government reports and tripartite meetings on reporting issues.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by the SNEF. 2008 AR: Observations by the SNEF. 2007 AR: Observations by the SNEF. 2006 AR: Observations by the SNEF.	
	Workers' organizations	2009 AR: Observations by the NTUC. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the ITUC. 2007 AR: Observations by the NTUC. Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the NTUC Observation by the ICFTU. 2005 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Singapore ratified in 1965 the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>NO for C.87.</p> <p>2009 AR: According to the Government: Although Singapore has not ratified C.87, its law in practice is in line with the principle and spirit of this Convention. This includes the right to form and join a trade union, the right to collective bargaining, the free election of union leaders and the protection and well-being of union members. The existing laws which have evolved over the years and are based on the principle of cooperation and partnership, have worked well for Singapore and benefited its economy, employers and workers over the past decade. The Government will then continue to ensure that freedom of association and protection of the right to organize are carried out in line with the principles of this Convention. Concerning ILO's comments and concerns with regard to Singapore's non-intention to ratify C.87, the Government would like to seek ILO's understanding on the relevance of its national trade union laws that have helped prevent and resolve unnecessary industrial disputes which are detrimental to business and interests of workers. These laws which allow businesses and unions work harmoniously to achieve win-win results, have worked well for Singapore and benefited its economy, employers and workers over the past decades. Notwithstanding, the Government would like to assure the ILO that the spirit and principles of C.87 are encapsulated in Singapore's laws and practices, and are closely adhered to.</p> <p>The NTUC expressed its support to the ratification of C.87. It further mentioned that, as had already been noted by the Government under the 2008 AR, some amendments to national laws were required to reflect the country's needs.</p> <p>2008 AR: According to the Government: Contrary to the country's current national regulations that require formal registration of trade unions, with prescribed rules on union administration and activities, Convention No. 87 requires a de-regulated approach in the management of trade unions. Under this Convention, trade unions are generally unrestricted in their roles and activities, which is not in line with the national existing laws based on the development of responsible trade unions and enlightened employers. Hence, ratification would require the Government to make major amendments to the laws that have been functioning well and benefited the economy, employers and workers over the past decades. Amending these laws would undermine the harmonious industrial relations and strong tripartite relationship that the country has developed.</p> <p>2006 AR: In response to the ICFTU's observations, the Government stated that "Singapore would continue to review ILO Conventions with the view to additional ratifications.</p>
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	YES , according to the Government, although Singapore has not ratified C.87, the principle and right (PR) is enshrined in Singapore's laws.
		Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Policy Government's prospects: Enhancing cooperative and effective industrial relationships in order to facilitate the realization of the principle and right. Means of action: Mainstreaming tripartite framework. • Legislation The Trade Unions Act, the Trade Dispute Act, the Criminal Law (Temporary Provisions) (Part III); and the Industrial Relations Act relate to the PR.
		Basic legal provisions	(i) The Constitution; (ii) the Trade Unions Act; (iii) the Trade Disputes Act, (iv) Part III of the Criminal Law (Temporary Provisions); and (v) the Industrial Relations Act.
		Judicial decisions	NIL

	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	NIL
			For Workers	2003 AR: Prior government authorization is necessary to operate workers’ organizations (the Industrial Relations Act, 1940). Freedom of Association (FOA) can be exercised by employees working in the teaching and medical professions and by foreign workers operating in Singapore. Public sector employees can form or join a trade union, except for those engaged in the security and defence of the country. Workers cannot exercise FOA under 16 years of age.
			Special attention to particular situations	NIL
			Information/Data collection and dissemination	2009 AR: According to the SNTUC: The SNTUC has 521,705 at May 2008 and about 10 per cent of them are migrant workers. 2001 AR: According to the Government: There is a lack of information and data on the PR.
		At international level	NIL	
	Monitoring, enforcement and sanctions mechanisms	2005 AR: According to the Government: Any group of seven or more prospective members can establish a union. The establishment of a union is also subject to the approval of the Registrar of Trade Unions, who has the power to refuse or cancel registration under certain conditions, particularly where one trade union already exists for workers in a particular occupation or industry (Trade Unions Act, 1940). The PR is enforced through law, collective agreements and tripartite consultations at all levels. In instances where the PR is not respected (for instance on the issue of termination and dismissal), the Ministry for Manpower has the power to decide on whether the termination is substantiate or not, after an inquiry conducted by the Commissioner for Labour. It may order reinstatement if the employer is found to have terminated the employee's service without just cause. The Minister may award compensation to the affected worker if reinstatement is considered to be undesirable and could affect labour relations at the workplace (Sections 17(2) b) and 17(2)(e) of the Industrial Relations Act).		
	Involvement of the social partners	2009 AR: According to the Government: National laws which allow businesses and unions work harmoniously to achieve win-win results, have worked well for Singapore and benefited its economy, employers and workers over the past decades. According the SNEF: The strong relationship between the Government, SNTUC and SNEF provides guidelines in many areas while leaving management and unions to freely conduct collective bargaining at company level. 2008 AR: According to the SNEF: The close collaboration among the tripartite partners has helped to promote and implement programmes of national importance such as: (i) enhancing productivity and competitiveness of the economy; (ii) facilitating the employability of older workers and (iii) improving the work-life harmony of workers. 2006 AR: According to the Government: In addition to the National Wage Council, tripartite taskforces have been formed to tackle policy issues such as older workers or job re-creation efforts. The Singapore National Employers’ Federation (SNEF) indicated that tripartite cooperation was well established through consultation and collaboration on various economic and social issues such as policy formulation and review or dispute settlement. 2000-2004 ARs: According to the Government: Employers’ and workers’ organizations have been involved in: (i) tripartite consultations on industrial relations; (ii) the formulation and implementation of wage policies and wage guidelines; (iii) the review of labour laws and promotion of good employment practices; (iv) the improvement of productivity and skill development of workers.		

	Promotional activities	<p>2009 AR: According to the NTUC: A tripartite committee has been set up and labour meetings were organized.</p> <p>2006 AR: The National Trades Union Congress mentioned that it was increasing its efforts to enforce the right to organise and reach 1 million members by 2015. Training courses to union leaders are also conducted.</p> <p>2000-2004 ARs: The Government reported on frequent training of workers to promote skill development and productivity and collective bargaining.</p>	
	Special initiatives/Progress	<p>2009 AR: According to the SNTUC: The SNTUC has also set up the SNTUC Migrant Workers' Forum (MWF) in 2003 with the following objectives: (i) raise awareness of union assistance to migrant workers in Singapore; (ii) advocate for better measures and/or undertake initiatives to protect the interests and well-being of migrant workers in Singapore; and (iii) establish cooperative unions and collaboration with interested parties.</p> <p>2007 AR: According to the Government: Union membership figures stand at 450,000 in 2005. The Ministry of Manpower noted from the National Trades Union Congress reports that about 30% of unionised companies have included a clause in their collective agreements to allow employment of older workers beyond the retirement age of 62 years old. Moreover, a new union for workers operating in private educational institutions was set up in March 2006 and has a potential of 50,000 members.</p> <p>The NTUC indicated that it had set up a Unit for Contract Workers to help address the concerns of a growing number of contract workers although the overall number vis-à-vis permanent employees is still small. A new union for employees working in private educational institutions was set up in March 2006, with a potential of 50,000 members.</p> <p>2006 AR: According to the Government: The fact that unions have widened their membership from about 314,000 in 2000 to 443,000 in 2004 can be regarded as a successful example in the realization of the PR.</p> <p>2003 AR: According to the Government: Special initiatives have been taken through training of officials, the promotion of workers' productivity and the increase in the number of trade unions.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	2007 AR: No particular challenges have been raised in the SNEF's observations.
		Workers' organizations	<p>2009 AR: According to the NTUC: Although the issue of ratification of C.87 was discussed in the country, the Government further needs to consider it as a priority.</p> <p>2007-2009 ARs: According to the ICFTU and the ITUC: (i) the Labour law is outdated; (ii) the right to form unions is recognized but Parliament may impose restrictions on the formation of a union on the ground of security, public order or morality; (iv) excessive powers of the Registrar of Trade Union; (iii) prohibition of government employees from joining or forming trade unions; (iv) interference in trade unions affairs such as restrictions of trade unions on the right to elect their officers under the Trade Union Act or control over trade unions finances; (v) there is no effective recognition of freedom of association for migrant workers.</p> <p>2002 and 2005-2006 ARs: The ICFTU raised the following challenges: (i) excessive powers of the Registrar of Trade Union; (ii) prohibition of government employees from joining or forming trade unions; (iii) no enforcement of binding arbitration; (iv) restrictions on the right to strike and prohibition of strike in essential services (water, gas, electricity); (v) restrictions of trade unions on the right to elect their officers under the Trade Union Act; (vi) prohibition of citizens with criminal record and migrant workers to work for a trade union; (vii) investigations of union finances; (viii) increased representation for executives; (ix) restrictions on the formation of union on the grounds of security, public order or morality.</p>
	According to the Government	<p>2009 ARs: In response to the ICFTU's observations, the Government mentioned the following: (i) foreign and migrant workers' rights: Trade union officers and trustees, whether local or foreign, are democratically elected by their members to represent their interests.</p>	

		<p>However, under section (30) of the Trade Unions Act, trade union officers who are not Singapore citizens are required to seek approval from the Minister of Manpower before assuming responsibilities. In fact, many of the unions have foreign workers as their members, particularly in industries where there are large numbers of foreign workers; (ii) relevance of Singapore's laws: The Government reiterates that Singapore's laws continue to be relevant for our country and has helped to prevent and resolve industrial disputes which are detrimental to businesses and the interests of workers. These laws which allow businesses and unions to work harmoniously to achieve win-win results, have worked well for Singapore and benefited our economy, employers and workers over the past decades. Hence, there is no need to amend national laws; and (iii) the Government trusts that the ILO assesses Singapore's performance objectively in respect of freedom of association and collective bargaining, taking into account its harmonious labour management relations fostered by strong tripartite relationship as well as our proven track record in enhancing the economic and social well-being of its workers.</p> <p>2008 AR: The Government indicated that in contrast to Singapore's current national regulations, which requires formal registration of trade unions, with prescribed rules on union administration and activities, C.87 requires a de-regulated approach in the management of trade unions. Under this Convention, trade unions are generally unrestricted in their roles and activities, which is not in line with the national existing laws based on the development of responsible trade unions and enlightened employers. Hence, ratification would require the Government to make major amendments to the laws, which have been functioning well and benefited the economy, employers and workers over the past decades. Amending these laws would undermine the harmonious industrial relations and strong tripartite relationship that the country has developed.</p> <p>2006 and 2007 ARs: In response to the ICFTU's observations, the Government reported the following (i) Trade union leaders in Singapore are democratically elected and if they fail to be accountable for their decisions, they can be voted out by their members; (ii) restrictions on trade unions' activities only apply to persons who are criminally convicted and foreigners whose stay is transient in nature; (iii) Singapore's laws continue to be relevant for the country and have helped to prevent and resolve unnecessary industrial disputes which are detrimental to business and workers' interests; (iv) workers' fundamental rights in respect of the PR are enshrined in national laws; (v) Singapore has closely worked with the ILO in promoting constructive industrial relations, workers' rights, occupational safety and health and training and skills. In response to the ICFTU's observations for the 2002 and 2005 ARs, the Government observed that government employees were allowed to form and join trade unions.</p> <p>2002 AR: In response to the ICFTU's observations, the Government made the following comments: (i) The purpose of the union registration is to confer on registered trade unions certain rights, immunities and privileges, not to exercise control. Refusal for a registration of a trade union by the Registrar can help limit the proliferation of trade unions and strengthen solidarity of the labour movement; (ii) a decision to carry out strike action must be supported by the majority of union members; (iii) restrictions on the rights of trade unions to appoint their officials cover persons convicted of serious criminal offences; (iv) restrictions on expenditure of union funds prevent the union funds from being used as contributions to a political party or for a political purpose. In conclusion, the Government stated that the objectives of the Trade Union Act are to ensure fair elections and proper management of the union for the benefits of union members.</p>
TECHNICAL COOPERATION	Request	NIL
	Offer	NIL

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of Singapore (and another country) reported that it did not intend to ratify C. 87., given that, according to the Government, ratification would require it to make major amendments to the laws, which would undermine the harmonious industrial relations and strong tripartite relationship that the country has developed. In this regard, the IDEAs recalled that the following: “Under the 1998 ILO Declaration, every member State even if it has not ratified the fundamental conventions, has an obligation rising from the very fact of membership in the Organization, to respect, promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those conventions. Freedom of association is the essence of the ILO and it is clear that its absence deprives employers and workers of their right to participate in and benefit from the national economy and to contribute to respect for human right and democracy”. Therefore, they urged the Government of Singapore to work jointly with the Office in giving effect to this principle and right. The IDEAs also listed Singapore among the countries where some unions are subject to government’s interference or influence, and recalled in this regard the following: “(...) the right to official recognition is an essential aspect of the right to organize as it allows employers’ and workers’ organizations to be in a position to play their roles efficiently. Furthermore, any government intervention in employers’ and workers’ organizations’ internal affairs (right to establish and join organizations of their own choosing, without distinction whatsoever and without previous authorization, right to draw up internal constitutions and rules, right to elect their representatives in full freedom, etc.) constitutes interference in the functioning of these organizations, which is a denial of the principle and right”. Finally, the IDEAs noted that restrictions on the right to organise of certain categories of workers in Singapore (and some other countries), such as migrant workers, were not compatible with the realization of this principle and right (Cf. Paragraphs 27, 28 and 36 of the 2008 AR Introduction – ILO: GB.301/3).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	<p>NIL</p>



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: SOLOMON ISLANDS

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , under the 2006 and the 2008 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of the employers' organizations (the Solomon Islands Chamber of Commerce and Industry (SICCI); the Solomon Islands Chinese Association (SICA); the Solomon Islands Indigenous Business Association (SIIBA); the Solomon Islands Women in Business Association (SIWIB); the Association of Solomon Islands Manufacturers (ASIM); the Solomon Forestry Association (SFA)) and workers' organizations (the Solomon Islands Council of Trade Unions (SICTU); the Solomon Islands Public Employees Union (SIPEU); the Solomon Islands National Union of Workers (SINUW); and the Solomon Islands National Teachers' Association (SINTA) by means of consultation and communication of a copy of Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by the ASIM. 2008 AR: Observations by the SCCI. 2006 AR: Observations by SCCI, SICA, SIIBA, SIWIB, ASIM and SFA.	
	Workers' organizations	2009 AR: Observations by the SICTU. 2008 AR: Observations by the SICTU and SINUW. 2006 AR: Observations by SICTU, SIPEU, SINUW and SINTA.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Solomon Islands has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>YES, for both C.87 and C.98.</p> <p>2009 AR: The Government indicated its intention to ratify C.87 and C.98, and mentioned that, following Cabinet's approval for ratification, these instruments would be submitted to Parliament. The ASIM and the SICTU expressed their support to the ratification of C.87 and C.98.</p> <p>2008 AR: According to the Government: as a result of ILO technical assistance in 2005 to hold consultations with employer's and worker's organizations, the Cabinet approved on 17 May 2007 the ratification of C.87 and C.98 together with other unratified ILO fundamental Conventions. The Government intends now to bring national legislation into compliance with the ILO fundamental Conventions in consultation with the social partners and in cooperation with the ILO. The SICCI and the SICTU expressed their support to the ratification of C.87 and C.98.</p> <p>2006 AR: The Government indicated that it had the intention to ratify C.87 and C.98. It also appreciated the employers' and workers' organizations' (ASIM, SFA, SICCI, SIIBA, SIWIB, SICA, SICTU, SINUW, SINTA and SIPEU) support for the ratification of all ILO fundamental Conventions not ratified by Solomon Islands. In this respect, it requested ILO's technical assistance on the Declaration and standard-related issues and for capacity building in reporting.</p>
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	YES , the national Constitution, 1978, Article 3 (b), provides for the freedom of conscience, of expression and of assembly and association. Under Article 13 of the same text, the right to freedom of assembly and association and the right to belong to trade unions or other associations for the protection of interest shall not be hindered.
		Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Legislation <p>2008 AR: The Government has received the draft of the Industrial Relations Law elaborated in consultation with the social partners and the ILO. It intends to organize a national tripartite workshop on labour law review in cooperation with the ILO very shortly.</p> <p>2006 AR: Parts III and IV of the Trade Unions' Act (CAP 76), 1970 (as revised in 1998), provides for the registration and the rights and liabilities of trade unions. Freedom of association of employees shall not be subject to employers' interference under Section 60 of the same Act. In addition, the Solomon Islands ratified in 1985 the Right of Association (Agriculture) Convention, 1921 (No.11).</p> <p>Although there is no explicit reference to the right to collective bargaining in national laws and rules, this right is recognized under Section 26 of the Trade Unions Act, which provides that every trade union shall be liable on any contract entered into it or by an agent acting on its behalf, and under Section 59, which refers to agreements. Furthermore, this right is recognized in practice, and many collective bargaining agreements are currently in force in the country.</p>
		Basic legal provisions	(i) The national Constitution, 1978 (Articles 3(b) and 13); (ii) the Trade Unions' Act (CAP 76), 1970 (as revised in 1998), Parts III and IV, and Sections 26 and 59; and the Trade Unions Act (CAP 161), 1983).
		Judicial decisions	NIL

	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2006 AR: Government authorization or approval is not required to establish an employers' organization, but it is required for the conclusion of collective agreements (Trade Unions Act (CAP 76), 1970 (as revised in 1998). The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for all categories of employers.
			For Workers	2006 AR: Government authorization or approval is not required to establish a workers' organization, but it is required for the conclusion of collective agreements under Part III of the Trade Unions Act (CAP 76), 1970 (as revised in 1998), which provides for the conditions of registration of trade unions. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for the following categories of workers: (i) all workers in the public service; (ii) medical professionals; (iii) teachers; (iv) agricultural workers; (v) workers engaged in domestic work; (vi) workers in export processing zones (EPZs) or enterprises/industries with EPZs status; (vii) migrant workers; (viii) workers above the age 16 years (with exceptions- Cf. Trade Unions Act (CAP 161), 1983); and (ix) workers in the informal economy.
			Special attention to particular situations	NIL
			Information/ Data collection and dissemination	NIL
			At international level	According to Government: The principle and right (PR) is recognized at international level for employers' and workers' organizations.
	Monitoring, enforcement and sanctions mechanisms	2009 AR: According to the Government: A Principal Labour Officer has just been recruited by the Ministry of Labour. He is in charge of following up the application of international labour standards, including issues pertaining to the PR. 2006 AR: According to the Government: Specific governmental measures have been implemented (inspection and monitoring mechanisms,-but not enough; penal, civil or administrative sanctions; special institutional machinery) or are envisaged (legal reform, capacity building of government officials and employers' and workers' organizations; tripartite discussion of issue; awareness raising/advocacy) to respect, promote and realize the PR in the country. In instances where the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected, above-mentioned Section 13 of the national Constitution applies. In case of contravention of the right to freedom of assembly and association and the right to belong to trade unions or other associations for the protection of interest, the victims may apply to High Court for redress and shall be entitled to compensation (Sections 17 and 18 of the Constitution). Moreover, an employer who infringes the right to freedom of association of employees shall be guilty of an offence and shall be liable to a fine of two hundred dollars (about US\$ 20 as of September 2005) or to imprisonment for six months, or to both penalties (Section 60 of the Trade Unions' Act (CAP 76)).		
Involvement of the social partners	YES 2006 AR: According to the Government: A labour law reform is being initiated in association with the social partners.			

	Promotional activities	<p>2009 AR: According to the Government: The new Principal Labour Officer has participated in the TURIN course on international labour standards where issues relating to the Declaration and the PR were discussed among others. The SICTU indicated that it was planning to organize a workshop on international labour standards issues, including the PR.</p> <p>2008 AR: The Government is collaborating more and more with the social partners in the national labour law review and has organized activities related to the Declaration follow-up in the country. The SICCI stated that Labour Day celebrations are organized but more substantial promotional activities should be carried out.</p>	
	Special initiatives/Progress	<p>2008 AR: The Government provided financial assistance for the national celebration of Labour Day. These activities included awareness raising on fundamental principles and right at work (FPRW), including radio broadcasting. Furthermore, a weekly awareness raising radio program on the FPRW is being organized.</p> <p>2006 AR: According to the Government: (i) The existence of Police associations can be regarded as successful examples in relation to freedom of association; (ii) the Government intends to ratify C.87 and C.98; and (iii) the Government is currently initiating a labour law reform in association with the social partners and the ILO in order to ensure compliance of national laws with the provisions of C. 87 and C.98.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2009 AR: According to the ASIM: The PR needs to be developed in the country.</p> <p>2008 AR: The SICCI indicated that the Government lacked capacity in the monitoring and enforcement of the law.</p> <p>2006 AR: According to the employers' organizations, the main difficulties encountered in realizing the PR in Solomon Islands are as follows:</p> <p>SFA: (i) lack of employment opportunities; (ii) lack of social dialogue; (iii) inadequate labour laws; (iv) lack of enforcement capacities; and (v) lack of public awareness on the PR;</p> <p>SICA: (i) lack of adequate legislation; (ii) lack of information and data; (iii) lack of public awareness-raising; and (iv) lack of ILO support and technical cooperation programmes;</p> <p>SIWIB: (i) lack of adequate legislation; (ii) lack of ratification of C.87 and C.98 by the Government; and (iii) lack of awareness-raising among workers' organizations, given that many workers are not aware of their rights and unemployment is very high in the country;</p> <p>SICCI: (i) inadequate legislation; (ii) inadequate enforcement of the legislation; (iii) lack of desire of certain employers to comply with the laws; (iv) lack of resources and staff for the labour inspection; and (v) lack of ILO support and technical cooperation programmes;</p> <p>ASIM: (i) lack of communication and social dialogue on the PR; (ii) lack of coordination among government officials; (iii) inadequate legislation; (iv) lack of expertise, resources and capacity of the Labour Division; and (v) lack of information and data collection;</p> <p>SIIBA: (i) inadequate legislation; (ii) inadequate enforcement of the legislation; (iii) lack of expertise and resources in the Labour Division; (iv) lack of resources and staff for the labour inspection; (v) lack of information and data collection; and (vi) lack of ILO support and technical cooperation programmes.</p>
		Workers' organizations	<p>2009 AR: According to SICTU: There is a need to review national legislation.</p> <p>2006 AR: According to the workers' organizations, the main difficulties encountered in realizing the PR in Solomon Islands are as follows:</p> <p>SIPEU: (i) very poor legislation; (ii) lack of capacity of the Labour Division to enforce laws and regulations; and (iii) lack of training and capacity building among employers' and workers' organizations;</p> <p>SINTA: (i) lack of adequate legislation; (ii) lack of capacity of the Labour Division; and (iii) lack of training and capacity building among employers' and workers' organizations;</p> <p>SICTU and SINUW: (i) lack of adequate legislation; (ii) lack of ratification of C.87 and C.98 by the Government; and (iii) lack of awareness-raising among employers' and workers' organizations.</p>

	According to the Government	<p>2008 AR: The Government reiterated the same challenges mentioned under the 2006 AR. It added that the Labour Division lacked capacity to carry out its monitoring role to operate and report effectively to the ILO.</p> <p>2006 AR: The main difficulties encountered in realizing the PR in Solomon Islands are as follows: (i) lack of public awareness and support; (ii) lack of information and data; (iii) social values, cultural traditions; (iv) social and economic circumstances; (v) legal provisions; (vi) lack of capacity of responsible government institutions; (vii) lack of capacity of employers' organizations; (viii) lack of capacity of workers' organizations; and (ix) lack of social dialogue on the PR.</p>
TECHNICAL COOPERATION	Request	<p>2009 AR: According to the Government: The ILO's technical cooperation is needed to strengthen the capacity of the Government and the employers' and workers' organizations. The ASIM and the SICTU also emphasized the need to further develop the ILO's assistance in the country.</p> <p>2008 AR: According to the Government: the requests made under the 2006 AR remain valid. The Government and the SICCI again request ILO assistance to carry out a country assessment to be validated by a national tripartite workshop on the FPRW. This will allow the Government and the employers' and workers' organization to draw a national plan of action to better realize these principles and rights in Solomon Islands.</p> <p>2006 AR: According to the Government: There is a need for ILO technical cooperation to facilitate the realization of the PR in Solomon Islands, in particular in the following areas, in order of priority: (1) Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR; strengthening data collection and capacity for statistical analysis; legal reform (labour law and other relevant legislation); capacity building of responsible government institutions; Strengthening capacity of employers' organizations; strengthening capacity of workers' organizations; strengthening social dialogue; and (2) Awareness-raising, legal literacy and advocacy; sharing of experiences across countries/regions; training of other officials (police, judiciary, social workers, teachers) These priorities may be satisfied through the preparation (survey and validation seminar) and launch of a national Declaration Programme for the Solomon Islands. Mediation, arbitration and conciliation procedures should also be strengthened.</p> <p>All employers' and workers' organizations supported the Government's request for ILO technical cooperation, including the launch of an ILO Declaration Programme to facilitate the promotion and realization of the fundamental principles and rights at work in Solomon Islands.</p> <p>According to the employers' organizations, the ILO technical cooperation would be necessary to assist in the realization of the PR in Solomon Islands in the following areas:</p> <p>SFA: (i) labour law reform; (ii) employment creation, (iii) social dialogue; and (iv) public awareness raising on the PR; SICA: (i) legislation; (ii) data collection; and (iii) public awareness raising on the PR; SIWIB: (i) educational programmes; (ii) capacity building; and (iii) adequate coordination among employers' and workers' organizations concerning the promotion and realization of the PR; SICCI: (i) legal reform; and (ii) strengthening of the Government and the employers' and workers' organizations capacities in enforcing laws and realizing the PR; ASIM: (i) social dialogue, (ii) labour law reform, (iii) data collection; and (iv) capacity building of Government institutions and of employers' and workers' organizations; SIIBA: (i) labour law reform; and (ii) capacity building of Government institutions and of employers' and workers' organizations. According to the workers' organizations, the ILO technical cooperation would be necessary to assist in the realization of the PR in Solomon Islands in the following areas: SIPEU, SINTA, SICTU and SINUW: (i) capacity building of Government institutions and of employers' and workers' organizations.</p>

TECHNICAL COOPERATION	Offer	ILO (ILO: Assistance in reporting under the Declaration' Annual Review; labour law reform; and decent work country programme)
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) observed that the Annual Review had made it possible to highlight and follow up country situations that required greater attention, and that some countries such as new member States, in particular in the South Pacific (as well as China and the Gulf States) had made important efforts during this process. However, according to them, more needed to be done. The IDEAs also noted that some countries facing structural difficulties, such as Solomon Islands (and three other countries), were able to report with ILO assistance. They encouraged Solomon Islands to initiate the necessary labour law reforms to remove the obstacles to ratification of C.87 and C.98. Finally the IDEAs acknowledged the high number of promotional activities concerning the realization of the PR in Jordan (and some other countries), and encouraged the Office to maintain its support to these activities (Cf. Paragraphs 12, 25, 32 and 35 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2006 AR: The IDEAs encouraged the Government of Solomon Islands that had provided its first report under the Declaration to follow up and had expressed its willingness to ratify C.87 and C.98 (Cf. Paragraph 34 of the 2006 Annual Review Introduction – ILO: GB.295/5).</p> <p>2005 AR: The IDEAs looked forward to receiving a first reply from the Solomon Islands and other countries that had never reported under the Declaration Annual Review (Cf. Paragraph 8 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2000-2004 ARs: The IDEAs expressed concern that several countries, including Solomon Islands, had never reported under the Declaration Annual review. They recommended that the Office initiate a dialogue with Solomon Islands and other countries that had never reported under the Declaration Annual Review (Cf. Paragraph 9 of the 2003 Annual Review Introduction – ILO: GB: 286/4 and Paragraph 16 of the 2004 Annual Review Introduction – ILO: GB.289/4, for example).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: SOMALIA

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, since the 2006 Annual Review (AR). No change report under the 2007 AR (national crisis).	
	Involvement of Employers' and Workers' organizations in the reporting process	2008 AR: According to the Government: The Somalia Employers' Association (SEA) has been established in January 2007. Small workers' unions have been also established, but the umbrella national union is yet to be established, as part of an ongoing process. According to the Government: A process is being developed in view of establishing in the country new employers' and workers' organizations.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	NIL	
	Workers' organizations	NIL	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Somalia has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).
		Ratification intention	<p>YES, since 2007, for C.87 and C.98.</p> <p>2009 AR: The Government confirmed its intention to ratify all the ILO fundamental Conventions, including C.87 and C.98, as soon as possible and with ILO's technical support.</p> <p>2008 AR: According to the Government: The Government is yet to receive the ILO technical assistance, which was requested in 2005. Once this technical guidance is received, the Government will start the ratification process in consultation with the social partners. The Government intends to ratify the ILO Fundamental Conventions, but still lacks technical capacities.</p> <p>2006 AR: According to the Government: With a view to considering ratification of all ILO Fundamental Conventions, the Government would appreciate receiving ILO technical assistance in organizing a national workshop on labour standards and the Declaration on Fundamental Principles and Rights at Work (FPRW).</p>
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	YES , the principle of freedom of association and the effective recognition of the right to collective bargaining (PR) is recognized in Somalia under articles 19.1 a) and 22.1 a) of the 2004 Somali Transitional Federal Charter (STFC).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Policy/Legislation and/or Regulations	<ul style="list-style-type: none">• Legislation <p>2008 AR: According to the Government: Law No. 65 of 18 October 1972 deals with regulations on civil servants was revised and adopted by the Parliament. As a result, an independent new Civil Service Commission (CSC) was established and will deal with terms and conditions of civil servants. The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Somalia under Sections 9-30 of the Labour Code, Law No. 65 of 18 October 1972.</p>	
		Basic legal provisions	(i) The 2004 Somali Transitional Federal Charter (STFC) (articles 19.1 a) and 22.1 a), (ii) the Labour Code, Law No. 65 of 18 October 1972 (sections 9-30).	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	<p>2006 AR: Government authorization or approval is required neither to establish an employers' organization (in accordance with article 14.2 b) of the Somali Transitional Federal Charter (STFC), nor to conclude collective agreements. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international), levels for all categories of employers.</p>
			For Workers	<p>2006 AR: Government authorization or approval is required neither to establish a workers' organization (in accordance with Article 14.2 b9 of the Somali Transitional Federal Charter (STFC), nor to conclude collective agreements. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for the following categories of workers: (i) all workers in the public service; (ii) medical professionals; (iii) teachers; (iv) agricultural workers; (v) workers engaged in domestic work; (vi) workers in export processing zones (EPZs) or enterprises/industries with EPZs status; (vii) migrant workers; (viii) workers above the age 15 years under certain conditions (section 11 of the Labour Code) and (ix) workers in the informal economy.</p>
			Special attention to particular situations	NIL
			Information/ Data collection and dissemination	NIL
			At international level	According to the Government: The principle and right (PR) is recognized at international level for employers' and workers' organizations.
	Monitoring, enforcement and sanctions mechanisms	<p>2008 AR: According to the Government: As a result of the adoption of Law No. 65 of 8 October 1972, an independent new Civil Service Commission (CSC) was established, which will deal with terms and conditions of civil servants.</p> <p>2006 AR: According to the Government: No specific measures have been implemented to respect, promote and realize the principle and right in the country. In instances where the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected, penalties, including fines and imprisonment, are provided for under Part X (sections 143-146) of the Labour Code.</p>		
	Involvement of the social partners	NIL		

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	Promotional activities	<p>2008 AR: The Government indicated that a government official was trained on International Labour Standards (ILS) and the Declaration Follow-up between May-June 2007 under the sponsorship of the ILO in Geneva and Turin.</p> <p>2006 AR: According to the Government: No specific measures have been implemented to respect, promote and realize the principle and right in the country. However, after 15 years of civil war and political turmoil, a Transitional Federal Parliament and Transitional Federal Government have been formed in 2004 in Nairobi, Kenya. A process has been initiated in view of establishing in the country a new labour administration, new employers' and workers' organizations, new tripartite institutions, revised labour laws and new labour courts.</p>	
	Special initiatives/Progress	NIL.	
	According to the social partners	Employers' organizations	NIL
		Workers' organizations	NIL
TECHNICAL COOPERATION	According to the Government	<p>2009 AR: The Government reiterated the same peace and capacity challenges that made it difficult to realize the PR.</p> <p>2008 AR: The Government is endeavouring to establish a total peace in the country. As a result of a long period of instability, the Government has no record for reference purpose. There is also a lack of technical personnel and financial means. This also goes for the employers' and workers' organizations that need training and capacity building.</p> <p>2007 AR: The Government reported no change because of difficult national circumstances.</p> <p>2006 AR: The main difficulties encountered in realizing the PR in Somalia are as follows: (i) lack of public awareness and support; (ii) lack of information and data; (iii) social and economic circumstances; (iv) political situation; (v) lack of capacity of responsible government institutions; (vi) lack of capacity of employers' organizations; (vii) lack of capacity of workers' organizations and (viii) lack of social dialogue on the PR.</p>	
	Requests	<p>2009 AR: The Government reiterated the requests for ILO technical cooperation made since the 2006 AR and expressed its interest in having an ILO Decent Work Country Programme developed in Somalia when national situation allows it.</p> <p>2008 AR: The Government reiterated its request for urgent ILO assistance to establishing labour administration in general. It requested once again ILO assistance for the realization of a country assessment followed by a national tripartite workshop on labour standards and the Declaration Follow-up.</p> <p>2006 AR: According to the Government: There is a need for ILO technical cooperation to facilitate the realization of the PR in Somalia, in particular in the following areas, in order of priority: (1) Capacity building of responsible government institutions; (2) Strengthening capacity of workers' organizations; (3) Strengthening capacity of employers' organizations; (4) Strengthening social dialogue; (5) Training of other officials (police, judiciary, social workers, teachers); (6) Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR; (7) Legal reform (labour law and other relevant legislation); (8) Awareness-raising, legal literacy and advocacy; (9) Strengthening data collection and capacity for statistical analysis; (10) Sharing of experiences across countries/regions; Moreover, in the current historical and instrumental process of national peace, stability and reconstruction, the ILO assistance is most needed to enable the Government to apply the Conventions in law and practice and report accordingly. In view of considering the ratification of all ILO Fundamental Conventions, the Government would appreciate receiving ILO technical assistance in organizing a national workshop on labour standards and the Declaration on Fundamental Principles and Rights at Work.</p>	
TECHNICAL COOPERATION	Offer	ILO: Assistance in reporting under the Declaration' Annual Review and training of a Government official on international labour standards and the ILO Declaration.	

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2009 AR: The Government reiterated the request for ILO technical cooperation made since the 2006 AR and expressed its interest in having an ILO Decent Work Country Programme developed in Somalia when national situation would allow it.</p> <p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) noted that some countries facing structural difficulties, such as Somalia (and three other countries), were able to report with ILO assistance. They encouraged Somalia to initiate the necessary labour law reforms to remove the obstacles to ratification of C.87 and C.98. Finally the IDEAs acknowledged the high number of promotional activities concerning the realization of the PR in Somalia (and some other countries), and encouraged the Office to maintain its support to these activities (Cf. Paragraphs 25, 32 and 35 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2006 AR: The IDEAs encouraged the Government of Somalia that had provided its first report under the Declaration to follow up and had expressed its willingness to ratify C.87 and C.98 (Cf. Paragraph 34 of the 2006 Annual Review Introduction – ILO: GB.295/5).</p> <p>2005 AR: The IDEAs looked forward to receiving a first reply from the Somalia and other countries that had never reported under the Declaration Annual Review (Cf. Paragraph 8 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2003-2004 ARs: The IDEAs expressed concern that several countries, including Somalia, had never reported under the Declaration Annual review. They recommended that the Office initiate a dialogue with Somalia and other countries that had never reported under the Declaration Annual Review (Cf. Paragraph 9 of the 2003 Annual Review Introduction – ILO: GB: 286/4 and Paragraph 16 of the 2004 Annual Review Introduction – ILO: GB.289/4, for example).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: SUDAN

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, except for the 2000 Annual Review (AR).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Sudan Businessmen and Employers' Federation (SBEF) and the Sudan Workers' Trade Union Federation (SWTUF) by means of consultations and communication of Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by the SBEF. 2008 AR: Observations by the SBEF. 2007 AR: Observations by the SBEF. 2001 AR: Observations by the SBEF.	
	Workers' organizations	2009 AR: Observations by the SWTUF. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the SWTUF. Observations by the ITUC. 2007 AR: Observations by the SWTUF. Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the SWTUF. Observations by the ICFTU. 2005 AR: Observations by the SWTUF Observation by the ICFTU. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Sudan ratified in 1957 the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified the Freedom of Association and the Protection of the Right to Organize Convention 1948 (No. 87) (C.87).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	Under consideration, since 2002, for C.87	
			<p>2009 AR: According to the Government: Sudan is in a transitional period following the Comprehensive Peace Agreement (CPA). After the ongoing revision of constitutional and civil laws, ratification of C.87 will be considered. SWTUF reiterated its support to the ratification of C.87 by Sudan.</p> <p>2008 AR: The Government indicated that labour laws were being revised to allow ratification of C.87 by Sudan. The SBEF and the STWUF supported the ratification of C.87 by Sudan.</p> <p>2007 AR: According to the Government: After the CPA, an interim committee was adopted in December 2005, which caters for basic freedoms, including the right to organize. Accordingly, all Sudanese laws are being revised. Ratification will be possible after the adoption of new laws. The SWTUF supported the ratification of C.87 by Sudan.</p> <p>2006 AR: According to the Government: Ratification of C.87 is under consideration.</p> <p>2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001), the Government intended to ratify C.87.</p>	
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>YES The 1998 Constitution (article 26) provides for freedom of assembly and association for cultural, social, economic, professional or trade union purposes in accordance with the law.</p> <p>2006 AR: According to the Government: An Interim Constitution that covers all human rights including the right to organize is being drafted, following the Comprehensive Peace Agreement.</p>	
		Policy, legislation and/or regulations	<p>• Legislation: 2008 AR: According to the Government: The Public Service Act, 1995 has been revised in May 2007 by the Parliament after tripartite consultations.</p> <p>2006 AR: According to the Government: The Labour Law, 1997 has been revised by a tripartite committee. A tripartite body has also been set up to revise the Public Service Act, 1995.</p>	
		Basic legal provisions	(i) The 1998 Constitution (article 26); (ii) The Trade Union Act; (iii) The Labour Law, 1997, and (iv) The Public Service Act, 1998.	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2001-2003 ARs: No prior Government authorization is needed to establish employers' organizations (section 33 of the Trade Union Act, 2001). Freedom of association can be exercised at enterprise, sector/industry and international levels by all categories of employers.

		For Workers	2001-2003 ARs: The Government authorization/approval is required to establish workers' organizations. Freedom of association can be exercised at enterprise, sector/industry and international levels by the following categories of persons: (i) all workers in the public service; (ii) medical professionals; (iii) teachers; agricultural workers; (iv) workers engaged in domestic work; (v) workers in export processing zones (EPZs) or enterprises/industries with EPZ status; migrant workers; workers in the informal economy. Diplomats, judges, and legal advisors of the Attorney general, national security forces and domestic servants cannot exercise freedom of association (section 3 of the Labour Law, 1997).
		Special attention to particular situations	2003 AR: According to the Government: Special attention has been given to some specific industries/sectors.
		Information/data collection and dissemination	2001 AR: According to the Government: There is an annual report on collective bargaining and settlement of disputes. The Higher Council for Wages publishes periodical reports.
		At international level	According to the Government: There are no particular restrictions for the international affiliation of employers' or workers' organizations.
	Monitoring, enforcement and sanctions mechanisms	<p>2003 AR: According to the Government: The SWTUF and the Attorney General have joint jurisdiction over instances where the principle and right (PR) has not been respected. In cases where the right to collective bargaining has not been respected, the problem is solved through special judicial procedures.</p> <p>2001 AR: According to the Government: In case of the violation of the PR, the measures adopted are as follows: (i) labour inspection and complaints procedures (which are also available to employers' and workers' organizations); (ii) penal sanctions, (iii) sentences by judicial courts; (iv) enforcement of article 34 of the Constitution which provides that every aggrieved person who has exhausted the means of submitting grievance and complaints to the executive and administrative organs shall have the right of access to the Constitutional Court to protect their freedom, sanctities and rights. The Constitutional Court may, according to due process, exercise the power to annul any law or order that contravenes the Constitution, in order to restore the right to the aggrieved person or to compensate him/her for damage sustained.</p>	
	Involvement of the social partners	<p>2007 AR: According to the Government: The Minister of Labour is engaged in revising the labour laws in cooperation with the social partners. The SBEF mentioned its participation in the labour law review process that should ensure the right to organize in Sudan. According to SWUTF: Employers' and workers' organizations participated in the labour law revision process, which should ensure the right to organize.</p> <p>2006 AR: According to the Government: Tripartite committees have revised the Labour Law, 1997 and the Public Service Act, 1995. According to the SWTUF: Following the Ouagadougou African Unit (AU) Summit in September 2004, the SWTUF participated in the tripartite Committees to revise the Labour Law, 1997 and the Public Service Act, 1995. The President of the SWTUF is also a member of the Drafting Committee of the Interim Constitution.</p> <p>2001 AR: According to the Government: Social partners participated on an equal footing in the reform of the Trade Union Act, 1992 to promote and apply the PR.</p>	

	Promotional activities	<p>2009 AR: According to the SWTUF: Tripartite activities were organized for members of Parliament who have a stake in trade union activities. In addition, workshop and seminars were held for trade union members concerning the PR.</p> <p>2008 AR: The Government indicated that several workshops were organized with the ILO to strengthen partnership and social dialogue in 2006 and 2007. It added that a tripartite workshop would be organized in Khartoum in July 2007 in cooperation with the Arab Labour Organization (ALO).</p> <p>The SWTUF indicated that following the peace agreement, an agreement was signed in May 2007 with the Government of Southern Sudan in order to strengthen existing unions and establish new ones.</p> <p>According to the SBEF: Tripartite training courses on freedom of association and safety and health were organized in Khartoum in cooperation with the ALO. Three workshops were organized by the SBEF on the partial reintegration of the informal economy into the formal economy. In addition, medical services, information and telecommunication services and non-governmental educational institutions have been organized in associations or chambers.</p> <p>2007 AR: The SWTUF indicated that it had organized a workshop on the PR and participated in the labour law review process.</p> <p>2006 AR: According to the Government: A national tripartite workshop on fundamental ILO Conventions and the Declaration is planned, in cooperation with the ILO.</p> <p>The SWTUF stated the following: The SWTUF organized in 2004 and 2005 three training workshops on gender, with a focus on women in trade unions. It also prepared a working paper on workers' education activities in Sudan, which was also used in a joint workshop for trade union leaders in Sudan and Eritrea. Moreover, during the meeting of the Executive Council of the Organization of African Trade Union Unity (OATUU) held in Khartoum in May 2005, a regional workshop on trade and globalization was organized for African trade union leaders, in cooperation with the United Nations Economic Commission for Africa (UNECA).</p> <p>2005 AR: The SWTUF indicated that it had organized in January 2004 a workshop in collaboration with ILO. It hosted in January 2004, the 8th Ordinary Conference of OATUU with ILO attendance. It had also organized in March 2004 of a regional meeting to support women's participation in the trade union movement in the Arab countries.</p>	
	Special initiatives/Progress	<p>2008 AR: According to the SWTUF: Series of workshops were held to organize workers in the informal economy. As a result of this activity, many unions have been established in the informal economy (taxi drivers, bakeries, handicrafts, etc.)</p> <p>2007 AR: According to SWTUF: Trade union elections and congress were held in April 2006. Moreover, women's participation in the trade union movement is promoted and they currently represent 25% in many trade unions.</p> <p>2006 AR: According to the Government: (i) an interim Constitution covering all human rights including the right to organize, is being drafted; and (ii) tripartite committees have revised the Labour Law, 1997 and are revising the Public Service, 1995 Act in the spirit of the PR.</p> <p>2003 AR: According to the Government: In the public sector, collective bargaining concerning specific benefits have been carried out at sector and enterprise levels.</p>	
	CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	<p>Employers' organizations</p> <p>2008 AR: According to the SWTUF and the SBEF: The spirit of tripartism and social dialogue is lacking in Southern Sudan. According to the SBEF, the implementation of the right to organize in the informal economy is a major challenge in Sudan as this sector contributes to more than 70 per cent of the national income and more than 60 per cent of the workforce.</p>

		Workers' organizations	<p>2007-2009 ARs: According to the ICFTU and the ITUC: (i) the current Labour Code that came into effect in December 2000 continues to deny trade union freedoms and reinforces Government control over trade unions; (ii) the General Registrar has extensive power on trade unions' elections; (iii) trade unions that operate outside the state-controlled the SWUTF live in constant fear; (iv) in the same vein, the Trade Union Act, 1992, establishes a trade union monopoly controlled by the Government; (v) since the adoption of the Trade Union Act, 1992, strikes have been outlawed.</p> <p>2008 AR: According to the SWTUF and the SBEF: The spirit of tripartism and social dialogue is lacking in Southern Sudan. In addition, several strikes were organized by trade unions in the bank, health and education sectors. The problems were solved after tripartite negotiations and agreements on wage increase in these sectors. In the States of Kordofan, Blue Nile and Equatorial, successful agreements on wages and allowances were also concluded after strikes.</p> <p>2001 AR: According to the ICFTU: Since 1989, there are no democratic trade unions in Sudan.</p>
	According to the Government		<p>2008 AR: The Government supports the view of the SBEF concerning the challenges on the implementation of the right to organize in the informal economy.</p> <p>2003 AR: According to the Government: The main difficulties encountered in Sudan in realizing the PR are as follows: (i) social and economic circumstances, (ii) political situation, (iii) prevailing employment practices and (iv) legal provisions.</p>
	Request		<p>2009 AR: The Government, the SBEF and the SWTUF indicated that the ILO's technical cooperation was needed to strengthen tripartism and social dialogue.</p> <p>2008 AR: The Government requested the ILO's assistance to strengthen the federal and state governments' capacity to realize the PR. The SBEF requested the ILO's support to strengthen its capacity on freedom of association issues. The SWTUF requests the ILO's technical cooperation to strengthen tripartism and social dialogue in Southern Sudan. In addition, ILO technical cooperation was requested in 2006 on the ILO Declaration Follow-up.</p> <p>2007 AR: The Government reiterated its request for ILO technical cooperation to organize a national tripartite workshop with a view to raising awareness-raising activities on the PR. According to the SBEF: The ILO's technical cooperation would be necessary especially in training and capacity building for employers' organizations. According to the SWTUF: Capacity building is really needed for trade unions in Southern Sudan.</p> <p>2006 AR: According to the Government: The ILO's technical support to Sudan should be strengthened to promote and realize the PR, with a particular focus on freedom on association. The SWTUF requested the ILO's support for the organization of training courses and workshops for trade unionists in Sudan, with a special emphasis on war-affected areas.</p> <p>2005 AR: According to the Government: Needs for technical cooperation to facilitate the realization of the PR in Sudan exist in the following areas: (i) awareness rising on the PR; (ii) capacity building of labour administration and social partners.</p> <p>2005 AR: According to the SWTUF: ILO technical cooperation would be necessary especially in raising awareness on the PR.</p>
TECHNICAL COOPERATION	Offer		<p>2005 AR: According to the Government: In 2004, a number of activities were organized by the SWTUF in cooperation with the ILO, the Organization of African Trade Union Unity (OATUU) and Arab countries.</p>

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) encouraged Sudan (and few other governments) to complete its legal review process to remove the obstacles to ratification of C.87. They also acknowledged the high number of promotional activities concerning the PR in Sudan (and some other countries), and encouraged the Office to maintain its efforts to support these activities. However, they listed Sudan among the countries where some unions were subject to government's interference or influence, and recalled in this regard the following: "the right to official recognition is an essential aspect of the right to organize as it allows employers' and workers' organizations to be in a position to play their roles efficiently. Furthermore, any government intervention in employers' and workers' organizations' internal affairs (right to establish and join organizations of their own choosing, without distinction whatsoever and without previous authorization, right to draw up internal constitutions and rules, right to elect their representatives in full freedom, etc.) constitutes interference in the functioning of these organizations, which is a denial of the principle and right" (Cf. Paragraphs 32, 35 and 36 of the 2008 AR Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed Sudan among the countries that had been indicating their intention to ratify C.87 for several years, with no indication that progress had been made (Cf. Paragraph 33 of the 2007 AR Introduction – ILO: GB.298/3).</p> <p>2003 AR: The IDEAs were encouraged to see the Government of Sudan pointing out the needs in this country to strengthen the capacity building of workers' and employers' organizations and that it turned to the ILO for help (Cf. Paragraph 73 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: THAILAND

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , except for the 2000 Annual Review (AR).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of the employers' (Employers' Confederation of Thai Trade and Industry (ECONTHAI) and the Employers' Confederation of Thailand (ECOT)) and workers' organizations (the National Congress of Thai Labour (NCTL)) through communication of government reports and tripartite meetings on reporting issues.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by ECONTHAI comprised of 22 affiliates. 2007 AR: Observations by ECOT. 2004 AR: Observations by ECONTHAI. 2003 AR: Observations by ECOT.	
	Workers' organizations	2009 AR: Observations by the NCTL. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the NCTL. Observations by the ITUC. 2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the ICFTU. 2004 AR: Observations by the NCTL. 2003 AR: Observations by the NCTL. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Thailand has ratified neither the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) (C.87), nor the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>Under consideration, since 2001, for C.87 and C.98.</p> <p>2009 AR: According to the Government: The Government has appointed a working group to prepare draft amendments to nationals with a view to ensuring compliance with the provisions of C.87 and C.98. The NCTL reiterated its support to the ratification of C.87 and C.98 as the principle and right is promoted in the new national Constitution B.E 2550 (2007).</p> <p>2008 AR: ECONTHAI supported the ratification of C.87 and C.98 and indicated that a tripartite meeting had been set up. The NCTL also indicated its support to the ratification of C.87 and C.98.</p> <p>2007 AR: According to the Government: The survey for ratification of C.87 and C.98 has been completed. However, ILO technical cooperation would be needed to ensure compliance of national labour laws with the provisions of C.87 and C.98. The ECOT stated that ratification of C.87 and C.98 should be considered following national labour law review and tripartite consultations.</p> <p>2004 AR: The Government, through the Department of Labour Protection and Welfare (DLPW), stated that a budget had been allocated to study the readiness of Thailand to ratify C.87 and C.98.</p> <p>2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (2002): The Government intended to ratify C.87 and C.98.</p> <p>2001 AR: The Government indicated that it had undertaken to review national legislation and practices in respect of C.87 and C.98, after discussions with ILO experts in the multidisciplinary team (MDT) in Bangkok. It had planned to undertake a study and research in the first quarter of 2001, funded by the ILO on relevant existing national laws and practices.</p>
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>YES</p> <p>2008 AR: According to the Government: A new Constitution (B.E 2550 (2007)) was promulgated in August 24, 2007, which provides freedom for association for all persons including Government and State officials. The Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in Chapter 8, sections 199 and 200, provides for freedom of assembly and association, except by virtue of a law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly (section 45).</p>

		Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Policy 2007 AR: According to the Government: the Department of Labour Protection and Welfare (DLPW) of the Ministry of Labour and Social Welfare has established a policy and procedures to enhance the capacity of the social partners on the principle and right (PR). 2001 AR: According to the Government: the Department of Labour Protection and Welfare of the Ministry of Labour and Social Welfare has established policy guidelines for labour officers to promote sound industrial relations through: (i) bipartite consultation system in order to prevent labour disputes and labour management committees; (ii) grievance procedures; (iii) effective mechanisms; (iv) tripartite bodies for joint consultations on broad social and economic policies affecting industrial relations; (v) the establishment of employers' and workers' organizations; (vi) training programmes for employers and workers; and (vii) review of industrial relations provisions. • Legislation 2009 AR: According to the Government: The Government has appointed a working group to prepare draft amendments to nationals with a view to ensuring compliance with the provisions of C.87 and C.98. 2008 AR: According to the NCTL: The new draft Labour Relations Law will guarantee workers' rights in the public and private sectors. 2007 AR: According to the Government: In 2005, the DLPW set the Code of Practice for Promotion of Labour Relations in Thailand B.E.2548, which was a revision of Code of Practice B.E. 2539, aiming to rectify the Code to be appropriate with changing of current situations to enhance trade unions competitiveness especially in industrial sector. • Government's prospects: Harmonize national labour laws with ratified Conventions and ILO fundamental Conventions. • Means of action: Legal reform in process since 2001 in cooperation with the ILO. <p>The Labour Relations Act, B.E. 2518 (1975); the State Enterprise Labour Relations Act, B.E. 2534 (1991) and its amendment (in 2000); the Establishment of the Labour Court and Labour Court Procedure Act, B.E. 2522 (1979) and the Code of Practice for the Promotion of Labour Relations in Thailand, B.E. 2539 (1996) relate to the principle and right (PR).</p> <p>2002 AR: The Government received assistance from the ILO specialists based in the ILO Regional Office for Asia and the Pacific, in particular in reviewing existing labour relations laws to harmonize them with the PR. The Government, through the Ministry of Labour and Social Welfare, strongly encouraged and invited civil society and social partners to participate actively in strengthening the PR at national and international levels.</p> <p>2001-2002 ARs: According to the Government: The country labour laws are being reviewed to incorporate the provisions of ratified Conventions and those of the fundamental principles and rights at work. Human, material and financial resources have been provided to facilitate the realization of the PR and amendments have been made to the Labour Relations Act of 1975 to make it more compatible with the PR.</p>
		Basic legal provisions	(i) Constitution of the Kingdom of Thailand, B.E. 2540 (1997), (Chapter 8, sections 199 and 200); (ii) Labour Relations Act, B.E. 2518 (1975); (iii) State Enterprise Labour Relations Act, B.E. 2534 (1991) and its amendment (in 2000); (iv) Establishment of the Labour Court and Labour Court Procedure Act, B.E. 2522 (1979); (v) Code of Practice for the Promotion of Labour Relations in Thailand, B.E. 2539 (1996).
		Judicial decisions	NIL

	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2003 AR: Prior government authorization is necessary to operate employers' organizations (compulsory registration by the Registrar under the Labour Relations Act B.E. 2518, section 55). All categories of employers can set up their organizations.
		At national level (enterprise, sector/industry, national)	For Workers	2003 AR: Prior government authorization is necessary to operate workers' organizations (compulsory registration by the Registrar under the Labour Law, section 87). Freedom of Association (FOA) can be exercised by medical professionals, teachers, agricultural workers, workers engaged in domestic work, workers in export processing zones (EPZs) or enterprises/industries with EPZ status, migrant workers, workers of all ages, and workers in the informal economy. The State Enterprise Labour Relations Act B.E. 2543, section 42, contains provisions for the establishment of a State Enterprise Trade Union. However, FOA cannot be exercised by all public servants or workers under the age of 15. Concerning domestic workers, the right to organize and the right to collective bargaining shall be considered as the basis of the legal relations between employers and employees under the labour law.
			Special attention to particular situations	NIL
			Information, data collection and dissemination	According to the Government: There is a lack of information and data.
		At international level	According to the Government: There are no particular restrictions for the international affiliation of employers' and workers' organizations.	
	Monitoring, enforcement and sanctions mechanisms	2004 AR: According to the Government: Any employer who violates the PR shall be liable to a fine or to imprisonment (section 130 of the Labour Relations Act, B.E. 2518, sections 158 and section 159). 2001-2005 ARs: According to the Government: Inspection/monitoring mechanisms are envisaged to ensure the implementation of the PR. The PR is enforced through law, collective agreements, free dispute settlement procedures and tripartite consultations at all levels.		
Involvement of the social partners	In addition, the Ministry of Labour has organized tripartite seminars on these issues 2001-2002 ARs: According to the Government: Employers' and workers' organizations have been involved in the promotion and training on labour relations and in strengthening the PR at both the national and international levels.			

	Promotional activities	<p>2009 AR: The Government indicated that it had encouraged the establishment of workers' committees and encouraged workers to form trade unions.</p> <p>2008 AR: ECONTHAI indicated that is had organized several activities regarding the promotion of the PR including bipartite discussions.</p> <p>According to the NCTL: several activities were carried out within the industrial sectors in order to train the unions. Seminars on collective bargaining are also organized regularly in collaboration with the social security services. The NCTL is moreover participating in the labour law review process regarding the new draft Labour Relations Law and has submitted its comments to the Government.</p> <p>2007 AR: According to the Government: The DLPW has established a policy and procedure for preparing the capacity of the social partners by means of organising training courses on the PR. Since Government Fiscal Year 2004, training courses on labour relations have been organized for employers and employees. Number of training courses, 125 and number of trainees 8,365.</p> <p>2001-2005 ARs: The Government reported on frequent training of, and dissemination of information to government officials and social partners. Awareness-raising initiatives have been implemented in relation to the PR, through the Code of Practice for the Promotion of Labour Relations in Thailand, 1996.</p>	
	Special initiatives/Progress	<p>2009 AR: According to the Government: The Government has appointed a working group to prepare draft amendments to nationals with a view to ensuring compliance with the provisions of C.87 and C.98. In addition, the Ministry of Labour has organized tripartite seminars on these issues</p> <p>2004 AR: According to the Government: Special initiatives on the PR have been taken through: (i) the revision of existing labour relations laws; (ii) the promotion of a bipartite and tripartite labour relations system; and (iii) the support provided to trade unions, training of employers and workers.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2007 AR: According to ECOT: There is a lack of data on the PR.</p> <p>2004 AR: According to the ECOT: There is a lack of information and data.</p>

		<p>Workers' organizations</p>	<p>2007-2009 ARs: According to the ICFTU and the ITUC: (i) lack of priority given by the Government to labour issues; (ii) labour courts are very slow to handling disputes; (iii) no effective protection against anti-union discrimination; (iv) no union protection in universities; (v) restrictions on trade union rights to have more than two advisers; (vi) limitation of freedom of association in state enterprises; (vii) only a small proportion of workers are unionized; (viii) an estimated 5 per cent of employed workers are covered by collective bargaining agreements; (ix) migrant workers cannot enjoy full freedom of association.</p> <p>2008 AR: The NCTL is still concerned about the implementation of the principle of FACB in the police, civil servants and military sectors, particularly regarding their right to strike. It added that 50 % of the workers are in the agricultural sector. They are not aware of their rights, particularly their right to organize. Finally, the NCTL indicated that the multinationals operating and investing in Thailand often don't abide by national legislations.</p> <p>The ITUC raised the (following) additional challenges: (i) civil servants are excluded from both the State Enterprise Labour Relations Act (SELRA) and the Labour Relations Act (LRA), and there are clear government regulations saying they cannot form unions; (ii) restrictions on the right to strike in state enterprises, civil servants are denied this right and in the private sector the government may restrict strikes that would "affect national security or cause severe negative repercussions for the population at large."; (iii) the LRA forbids strikes in "essential services," which it defines in broader terms than those set out by the ILO; (iv) labour courts are very slow in handling disputes.</p> <p>2006 AR: The ICFTU raised the following additional challenges: (i) there are no specific protections for union founders or committee members; (ii) affiliation between State enterprise unions and private sector labour congresses or federations is restricted by the State Enterprise Labour Relations Act; (iii) a very small proportion of the total workforce is unionised (3.5 per cent in 2002); (iv) an estimated five per cent of employed workers are covered by collective bargaining agreements; (v) workers who do enjoy the right to join a union and collective bargaining are often victims of anti-union harassment; (vi) employers frequently dismiss workers trying to form trade unions; (vii) even where a court has ordered the reinstatement of an illegally fired worker, employers often react by offering substantial severance pay in lieu of reinstatement.</p> <p>2000-2005 ARs: The ICFTU raised the following challenges: (i) there is a lack of protection of unions; (ii) restrictions on trade union rights to have advisers; (iii) legal and political barriers in establishing and operating trade unions; (iv) absence of union for civil servants; (v) there are restrictions on the right to strike; (vi) trade union rights are weak under the proposed new law; (vii) there are restriction on FOA in the context of privatization; (viii) there are abuses of legal provisions (such as Article 75 of the 1998 Labour Protection Act) to keep trade unionists out of the factory; (ix) labour courts are inefficient; (x) there are restrictions on freedom of association of migrant workers; (xi) decentralized industries are located in border areas, where union density is low or non-existent.</p> <p>2005 AR: The NCTL raised the following challenges: (i) there are no major improvement in FOA; (ii) there is a lack of organization of workers in the public service and in the informal sector; (iii) the right to organize is denied to workers that are not employees; and (iv) there is lack of a general union in lieu of enterprise unions.</p> <p>2002-2004 ARs: The NCTL raised the following challenges: (i) there are restrictions on the right to establish trade unions; (ii) State enterprise employees in the private sector are banned from joining a federation or a confederation; (iii) the right to establish trade unions is violated; and (iv) there is a need to amend the Labour Relations Act, 1975.</p>
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	According to the Government	<p>2009 AR: The Government stated that it needed to overcome many bureaucratic problems.</p> <p>2004-2006 ARs: The Government identified the main difficulties encountered in Thailand in realizing the PR as follows: (i) social values, cultural traditions; (ii) social and economic circumstances; (iii) political situation; (iv) legal provisions; (v) prevailing employment practices; and concerning collective bargaining, the Government also encounters difficulties related to the lack of capacity of employers' and workers' organizations.</p> <p>2004-2005 ARs: In response to the ICFTU's observations, the Government made the following comments: Prior to taking any legal actions, a trade union must be registered under the Labour Relations Act (LRA 1975). The revised draft of the LRA 1975 prohibits unfair labour practices, promotes FOA and provides for collective bargaining and dispute settlement. Furthermore, under section 4 of the LRA 2000 (3rd issue), a State enterprise trade union federation can become a member of an employees' organization council. Moreover, the Government has undertaken a survey with a view to ratifying C.87 and C.98. When strikes are prohibited, it happens especially in enterprises of public interest. In addition, tripartite consultations are being envisaged by the Department of Labour Protection and Welfare with a view to revising the LRA. The draft revision of the LRA provides for the protection of the rights to establish trade unions. Moreover, the Constitution, article 30, guarantees equal protection for all. Unfair labour practices are prohibited by LRA 1975.</p>
TECHNICAL COOPERATION	Request	<p>2009 AR: According to the Government: The ongoing ILO programme should be maintained to support Thailand.</p> <p>2008 AR: The ECONTHAI requested ILO technical assistance for the elaboration of training programmes. The NCTL also called for the same assistance and added that assistance would be needed on the translation and vulgarization of the PR into the vernacular languages.</p> <p>2007 AR: According to the Government: With a view to ratifying C.87 and C.98, ILO technical cooperation is needed to harmonize national labour laws with the provisions of these Conventions. The ECOT requested ILO technical cooperation for awareness-raising activities on the PR.</p> <p>2005 AR: According to the Government: Needs for technical cooperation to facilitate the realization of the PR in Thailand exist in the following areas, in order of priority: (1) strengthening capacity of workers' organizations; (2) strengthening tripartite social dialogue; (3) awareness-raising, legal literacy and advocacy; (4) strengthening data collection and capacity for statistical analysis; (5) sharing of experiences across countries/regions; legal reform (labour law and other relevant legislation); capacity building of responsible government institutions; training of other officials; assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR.</p> <p>2001-2005 ARs: According to the Government: There is a need for further ILO cooperation in terms of capacity building and reporting.</p>
	Offer	NIL

EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) welcomed the inclusion of the principle and right within the Constitution of Thailand. They also acknowledged the high number of promotional activities concerning the realization of the PR in Thailand (and some other countries), and encouraged the Office to maintain its support to these activities. However, they noted that restrictions on the right to organize of certain categories of workers in Thailand, such as migrant workers, workers in the public service and agricultural workers, were not compatible with the realization of this principle and right (Cf. Paragraphs 33, 35 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2005 AR: The ILO Declaration Expert-Advisers (IDEAs) listed Thailand among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (Cf. Paragraph 13 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2003 AR: The IDEAs were encouraged to see the Government of Thailand pointing out the needs in this country to strengthen the capacity building of workers' and employers' organizations and that it turned to the ILO for help. In light of requests by Thailand for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, they called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field (Cf. Paragraphs 73 and 74 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: TIMOR-LESTE

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, since the 2006 Annual Review (AR). The Democratic Republic of Timor-Leste joined the ILO in 2003.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Fórum dos Empresários/Câmara do Comércio de Timor-Leste (FECCTL) and the Konfederasaun dos Sindikatu de Timor-Leste (KSTL) by means of consultation and communication of a copy of the Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	NIL	
	Workers' organizations	2008 AR: Observations by the International Trade Union Confederation (ITUC). 2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU).	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	The Democratic Republic of Timor-Leste has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).
		Ratification intention	YES, in process since 2008 for both C.87 and C.98. 2009 AR: According to the Government: Timor-Leste has received the appropriate technical support from the ILO and after having been discussed at tripartite level and submitted to and approved by the Council of Ministers, ratification of C.87 and 98 has been submitted to Parliament for approval. A plan for ratification of all the eight ILO fundamental Conventions within the next five years (i.e., through 2013) has been developed under the Decent Work Country Programme (DWCP). 2008 AR: According to the Government: ILO technical assistance in order to better understand international labour standards (ILS) and the ILO Declaration as well as labour law review are necessary before the process of ratification of C.87 and C.98 can be initiated in Timor-Leste.
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	YES, the Government indicated that the Timorese Constitution provides for the principle of freedom of association and the effective recognition of the right to collective bargaining (PR). The Constitution (Article 43-1 and 2) provides that: "1. Everyone is guaranteed freedom of association provided that the association is not intended to promote violence and is in accordance with the law. 2. No one shall be compelled to join an association or to remain in it against his or her will." Moreover, Article 52-1, 2 and 3 provides that: "1. Every worker has the right to form or join trade unions and professional associations in defence of his or her rights and interests. 2. Trade union freedom is sub-divided, namely, into freedom of establishment, freedom of membership and freedom of organisation and internal regulation. 3. Trade unions and trade union associations shall be independent of the State and the employers."

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Policy, legislation and/or regulations	• Legislation Sections 9.1 “ <i>Workers and employers shall have the right to freedom of association and collective bargaining.</i> ” and 24 of the Labour Code (Regulation No.2002/25) regarding to Collective Bargaining Procedures, provide for employers’ and workers’ rights to freedom of association and collective bargaining. Section 18 of the same text provides for the registration of employers’ and workers’ organizations.	
		Basic legal provisions	(i) The Constitution (Articles 43 and 52); (ii) the Labour Code (sections 3.4, 9.1, 18 and 24); and (iii) the Timor-Leste Public Service Law No.8/2004.	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2006 AR: No government authorization is required to establish an employers’ organization, or to conclude collective agreements. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for all categories of employers.
			For Workers	2006 AR: No government authorization is required to establish a workers' organization, or to conclude collective agreements. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for the following categories of workers: (i) workers in the public service, except public servants (in accordance with section 3.4 (a) of the Labour Code); (ii) medical professionals; (iii) teachers; (iv) agricultural workers; (v) migrant workers; (vi) workers above the age of 15 years; and (vii) workers employed by an employer who has been granted a temporary exemption under section 3.4 (c) of the Labour Code.
			Special attention to particular situations	NIL
			Information/ Data collection and dissemination	2009 AR: According to the Government: Employers’ organizations are represented by the main organization named Fórum dos Empresários/Câmara do Comércio de Timor-Leste (Employer’s Forum/Chamber of Commerce of Timor-Leste. This organization is resulted of the fusion of the main employers’ organizations in the country). The Trade Unions are represented by the Konfederasaun dos Sindikatu de Timor-Leste (KSTL) (Timor-Leste Confederation of Trade Unions). 2006 AR: According to Government: Six workers’ organizations and 16 employers’ organizations were registered in 2006.
			At international level	According to the Government: The international affiliation of employers’ or workers’ organizations is recognized.
	Monitoring, enforcement and sanctions mechanisms	2006 AR: According to Government: The Labour Relations Board is not functioning. However, the following measures have been implemented to promote and realize the principle and right (PR): (i) legal reform (labour law and other relevant legislation); and (ii) inspection/monitoring mechanisms. The establishment of special institutional machinery and sanctions is envisaged.		

	Involvement of the social partners	<p>2009 AR: According to the Government: Tripartite discussions have been carried out concerning ratification of C.87 and C.98. A first national seminar on international labour standards and the 1998 ILO Declaration was organized in October 2008, with a massive tripartite participation of government officials and employers' and workers' representatives. The employers' and workers' organizations were also involved in the preparation and the formulation of the Decent Work Country Programme (DWCP).</p> <p>2006 AR: According to Government: There is a tripartite examination of issues. Employers' and workers' organizations have been involved in the development and implementation of government measures through their participation in the National Labour Board, which is the responsible Government institution for, <i>inter alia</i>, policy advice and dispute settlement.</p>	
	Promotional activities	<p>2009 AR: According to the Government: A first national seminar on international labour standards and the 1998 ILO Declaration was organized in October 2008, with a massive tripartite participation of government officials and employers' and workers' representatives.</p> <p>2008 AR: The Government indicated that a government official was trained on International Labour Standards (ILS) and the Declaration Follow-up between May-June 2007 under the sponsorship of the ILO in Geneva and Turin.</p> <p>2007 AR: The Government indicated that it had organized workshops on labour issues.</p> <p>2006 AR: According to the Government: The following measures have been implemented to promote and realize the PR in Timor-Leste: (i) capacity building of responsible Government officials; (ii) capacity building of employers' organizations; (iii) capacity building of workers' organizations; (iv) tripartite discussion of issues; and (v) awareness raising/advocacy.</p>	
	Special initiatives/Progress	<p>2009 AR: According to the Government: The Government presented to the ILO its new draft of the Labour Code for comments and the document is expected to be submitted to the Council of Minister in the first half of 2009 and to be approved by the Parliament by the end of the year. A Decent Work Country Programme (DWCP) has been developed in 2008.</p> <p>2006 AR: According to the Government: The establishment of the Office of the Registrar can be regarded as a successful example (section 18 of the Labour Code).</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	NIL
		Workers' organizations	2007-2009 ARs: According to the ICFTU and the ITUC: (i) Restrictions on the freedom to assemble publicly and to strike; (ii) the enforcement of the labour law is limited; (iii) the Labour Relation Board is implemented but not active; (iv) Article 11 of the Immigration and Asylum Act, 2003, provides that foreigners are forbidden from participating in the "administrative or social organs of a union", and also prohibits foreigners from "organizing or participating in demonstrations, processions, rallies, and meetings of a political nature." Those who violate the law can be arrested and deported, and excluded from returning to Timor-Leste in the future.
	According to the Government	<p>2008 AR: The Government indicated the following challenges: (i) legal provisions are weak; (ii) lack of public awareness; (iii) capacity building is weak and (iv) labour inspection is weak.</p> <p>2007 AR: According to the Government: The main difficulties encountered in realizing the PR are related to the lack of training and capacity building on labour issues.</p> <p>2006 AR: According to the Government: The main difficulties encountered in Timor-Leste in realizing this PR are as follows: (i) lack of public awareness and/or support; (ii) social values, cultural traditions; (iii) social and economical circumstances; (iv) political situation; (v) legal provisions; (vi) prevailing employment practices; (vii) lack of capacity of Government institutions; (viii) lack of capacity of employers' organizations; (ix) lack of capacity of workers' organizations; and (x) lack of social dialogue on this PR.</p>	

TECHNICAL COOPERATION	Request	<p>2008 AR: The Government request ILO assistance to carry out a country assessment to be validated by a national tripartite workshop on the FPRW.</p> <p>2007 AR: According to the Government: ILO technical cooperation is necessary for training on labour issues.</p> <p>2006 AR: According to the Government: There is a need for ILO technical cooperation to facilitate the realization of the principle and right in Timor-Leste, in particular in the following areas, in order of priority: (1) Sharing of experiences across countries/regions; (2) Strengthening data collection and capacity for statistical analysis; (3) Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR; (4) Awareness-raising, legal literacy and advocacy; (5) Capacity building of responsible government institutions; (6) Training of other officials (police, judiciary, social workers, teachers); (7) Strengthening capacity of employers' organizations; (8) Strengthening capacity of workers' organizations; (9) Strengthening social dialogue; and (10) Legal reform (labour law and other relevant legislation).</p>
	Offer	<p>1. ILO (including a Decent Work Country Programme (DWCP); a Seminar on International Labour Standards and the 1998 ILO Declaration; a training in the ILO/Turin Centre(ILS/1998 ILO Declaration); labour law reform and assistance in reporting). The DWCP focuses on 3 major areas: (i) Youth Employment Promotion; (ii) Rural Economic Development; and (iii) Labour Market Governance, with the objective to help Timor-Leste with the ratification of the Core ILO Conventions, development of reporting capacity, and incorporation of ILS principles into national legislative framework and to increase capacity of employers' and workers' organizations to participate effectively in the development of social and labour policy.</p>
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) encouraged Timor-Leste to initiate the necessary labour law reform to remove the obstacles to ratification of C.87 and C.98. They acknowledged the high number of promotional activities concerning the PR in the Gulf States (and some other countries), and encouraged the Office to maintain its efforts to support these activities. Finally, the IDEAs noted that restrictions on the right to organize of certain categories of workers in Timor-Leste (and some other countries), such as migrant workers, were not compatible with the realization of this principle and right" (Cf. Paragraphs 32 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2005 AR: The IDEAs looked forward to receiving a first reply from the Timor-Leste and other countries that had never reported under the Declaration Annual Review (Cf. Paragraph 8 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: UNITED ARAB EMIRATES (UAE)

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, except for the 2000 and 2001 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the United Arab Emirates Federation of Chambers of Commerce and Industry (UAEFCCI, which operates as an employers' organization), the United Arab Emirates Coordinating Committee of Professional Associations (UAECCPA, which operates as the representative of workers' organizations) and the United Arab Emirates Coordinating Committee of Professional Bodies (UAECCPB) by means of consultations and communications of Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2009 AR: Observations by the UAEFCCI. 2008 AR: Observations by the UAEFCCI. 2007 AR: Observations by the UAEFCCI.	
	Workers' organizations	2009 AR: Observations by the UAECCPB. Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the UAECCPA. Observations by the ITUC. 2007 AR: Observations by the UAECCPA. Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the UAECCPA. Observations by the ICFTU. 2005 AR: Observations by the ICFTU. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	The United Arab Emirates has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>YES, since 2006, for C.87 and C.98</p> <p>2009 AR: The Government indicated its support to the ratification of C.87 and C.98, while mentioning that a solution for its sovereignty needed to be found. The UAEFCCI indicated its support to the ratification of C.87 and C.98. The UAECCPB reiterated its support to the ratification of C.87 and C.98, while noting that these instruments should be in compliance with the national labour policy.</p> <p>2008 AR: The Government reiterated its intention to ratify C.87 and C.98. The UAEFCCI and the UAECCPA also reiterated their support to ratification of C.87 and 98.</p> <p>2007 AR: The Government indicated six ILO Fundamental Conventions had been ratified, and that it would ratify the others (i.e. C.87 and C.98) shortly. The UAECCPA supported ratification of C.87 and C.98, as well as the establishment of workers' organizations in the United Arab Emirates.</p>	
Recognition of the principle and right (prospect(s), means of action, basic legal provisions)		Constitution	<p>YES Article 33 of the Constitution provides that "the freedom to organize and establish associations is guaranteed within the limits defined by law".</p>	
		Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Policy 2005 AR: The Labour Code is being reviewed in light of the provisions of ratified ILO Conventions and the fundamental principles and rights at work. The Cabinet has recently adopted a decision with a view to elaborating a federal law on the establishment of workers' organizations. • Legislation: 2007 AR: According to the Government: Amendment to the labour law is under review. 2006 AR: According to the Government: A draft law on workers' organizations and other amendments to the Labour Relations Act, 1980, were submitted to the ILO in April 2005 for review. The Government is currently waiting for ILO comments to go ahead with the law and amendments. 2005 AR: Federal Law No. 8 of 1980 regulating labour relations defines in section 154 a collective labour dispute as "any dispute between an employer and his employee the subject of which concerns the joint interests of all or certain subgroups of employees working in a specific establishment, occupation or trade or in a specific occupational sector". 	
		Basic legal provisions	<p>(i) Constitution (Art. 33); (ii) Federal Law No. 8 of 1980; (iii) Federal Law No. 6 of 1974, as amended by Federal Law No. 20 of 1981; (iv) Federal Law No. 22 of 2000 (section 9); and (v) Ministerial Decree No. 297 of 1994.</p>	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	<p>2002-2004 ARs: Prior government authorization is required to establish an employers' organization, but not to conclude collective agreements. All categories of employers can exercise freedom of association (FOA) and the right to collective bargaining at sector/enterprise, national and international levels.</p>

	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Workers	2002-2004 ARs: Prior government authorization is required to establish a workers' organization, but not to conclude collective agreements. Medical professionals can exercise FOA, as can teachers at sector, national and international levels, but the right to collective bargaining is recognized at enterprise, sector/industry, national and international levels. However, FOA and the right to collective bargaining cannot be exercised by the following categories of persons: (i) workers in the public service; (ii) agricultural workers; (iii) workers engaged in domestic work; (iv) workers in export processing zones (EPZs) or enterprises/industries with EPZ status; (v) migrant workers; workers in the informal economy; and (vi) all categories of "non-professional" workers. The minimum age for exercising this right is 18 years.
			Special attention to particular situations	2003 AR: According to the Government: Women workers and workers' organizations in the industry, banking, petroleum and other sectors.
			Information/Data collection and dissemination	2003-2004 ARs: According to the Government: There is a lack of information and data.
		At international level	According to the Government: There are no particular restrictions for the international affiliation of employers' and workers' organizations.	
	Monitoring, enforcement and sanctions mechanisms	2004 AR: According to the Government: In instances where the principle of collective bargaining has not been respected, penal and administrative sanctions are taken, the matter being referred to the courts. 2002 AR: According to the Government: The Conciliation Committees and the Higher Arbitration Committee have been established to settle collective labour disputes.		
Involvement of the social partners	2002 AR: The Government indicated that it seeks to promote and expand the scope of FOA through consultations with employers and professional associations in the country. Tripartite discussions of issues have been set up.			
Promotional activities	2009 AR: According to the Government: Consultations to find a solution for the labour issues were held between the Government and the social partners. The UAECCPB indicated that the election process within the professional bodies was a means to sensitizing the workers on labour issues. 2007 AR: The Government, the UAEFCCI and the UAECCPA mentioned their participation in the ILO/Gulf Cooperation Council (GCC) on the Declaration Follow-up organized in Kuwait City in April 2006. According to them, a labour law review is being carried out to promote the ILO Declaration. 2003 AR: According to the Government: Women workers can enjoy the right to FOA by forming their own committees and federations; five women were appointed as members of the Consultative Council of Sharjah. In September 2002, the Conciliation Board and the Supreme Arbitration Board promoted the mechanism of collective bargaining. Moreover, a technical committee was implemented in order to create workers' organizations. 2002 AR: The Government indicated that it was seeking to amend relevant laws and regulations to achieve the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining.			

	Special initiatives/Progress	<p>2008 AR: The Government, the UAEFCCI and the UAECCPA indicated that women membership represented 22% of the newly elected Federal National Council as a result of the elections that took place in 2006.</p> <p>2004 AR: According to the Government: A special initiative has been taken through the draft amendment of the Labour Law in relation to FOA, so as to allow the formation of workers' organizations, as jointly suggested by the Ministry of Labour and the Ministry of Justice. This amendment has been submitted to the Cabinet for approval. A technical committee is actively following up on this matter.</p>	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2009 AR: According to the UAEFCCI: The protection of the sovereignty of the UAE is a major challenge to the ratification of C.87 and C.98.</p> <p>2007 AR: According to the UAECCI: There is a lack of understanding on the ILO Fundamental Conventions and Declaration among the partners.</p>
		Workers' organizations	<p>2009 AR: According to the UAECCPB: The process of introduction of C.87 and C.98 into the country would need more time.</p> <p>2008-2009 ARs: The ITUC raised the following additional challenges: (i) the current Labour Law does not permit the formation of trade unions; (ii) the law does not recognise the right to collective bargaining; (iii) strikes are banned in the public sector; (iv) migrant workers (85-90 per cent of the workforce) would risk deportation for trying to organize unions or going on strike; (v) labour legislation does not cover public service workers, domestic workers or anyone working in the agricultural sector; and (vi) each export processing zones has its own labour regulations.</p> <p>2006-2007 ARs: According to the Arab Emirates Coordinating Committee of Professional Associations, although the Government is making progress in relation to FOA and other fundamental principles and rights at work, some entities are expressing reluctance due to their lack of awareness on the PR.</p> <p><i>The ICFTU raised the following additional challenges: (i) the Bill allowing the formation of trade unions in the private sector is still pending; (ii) in 2004, trade unions and collective bargaining were still banned, although some workers can associate; (iii) strike action is tolerated; (iv) each export processing zones has its own labour regulations.</i></p> <p>2000-2002, 2005-2005 ARs: The ICFTU raised the following challenges: (i) trade unions are illegal; (ii) the law does not recognize the right to organize nor the right to collective bargaining and the right to strike; (iii) payment is set by individual contracts that are reviewed by the Ministry of Labour, or in the case of domestic workers, by the Ministry of Immigration; (iv) labour laws do not apply to government employees, agricultural workers and domestic servants; (v) migrant workers (85-90 per cent of the workforce) would risk deportation for trying to organize unions or going on strike.</p>
	According to the Government	<p>2003 and 2007 ARs: The Government identified the main difficulties encountered in realizing the PR as follows: (i) lack of public awareness/support; (ii) lack of information and data; (iii) social values and cultural traditions; (iv) social and economic circumstances; (v) political situation; (vi) legal provisions; (vii) prevailing employment practices; (viii) lack of capacity of workers' organizations and (ix) lack of social dialogue on the PR.</p> <p>2000-2001 ARs: In response to ICFTU's observations, the Government made the following comments: (i) FOA exists under the law; (ii) it is not denied, but established professional organizations are different in form from traditional workers' organizations; (iii) the United Arab Emirates is a Federation and has no previous experience in the establishment of trade unions or labour federations; (iv) the right to collective bargaining is guaranteed by Federal Law No. 8 of 1980, which has established a mechanism to settle labour disputes through specific structures that are supervised by the labour administration.</p>	

TECHNICAL COOPERATION	Request	<p>2007 AR: According to the Government, the UAEFCCI and the UAECCPA: ILO technical cooperation is necessary for awareness raising activities on freedom of association and for the promotion of the Declaration in the United Arab Emirates.</p> <p>2006 AR: According to the Arab Emirates Coordinating Committee of Professional Associations, there is a need for ILO technical cooperation to facilitate the realization of FOA in the country, especially in raising awareness on the PR.</p> <p>2003 and 2007 ARs: According to the Government: There is a need for ILO technical cooperation to facilitate the realization of the PR in the country in the following areas, in order of priority: (1) sharing of experiences across countries/regions; (2) legal reform (labour law and other relevant legislation), strengthening capacity of workers' organizations, strengthening tripartite social dialogue; (3) capacity building of responsible government institutions, training of other officials, strengthening capacity of employers' organizations.</p>
	Offer	ILO, GCC
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) observed that the Annual Review had made it possible to highlight and follow up country situations that required greater attention, and that some countries, such as the Gulf States (as well as China and new member States, in particular in the South Pacific), had made important efforts during this process. However, according to them, more needed to be done. The IDEAs also acknowledged the high number of promotional activities concerning the PR in the Gulf States (and some other countries), and encouraged the Office to maintain its efforts to support these activities. However, they noted that restrictions on the right to organize of certain categories of workers in United Arab Emirates, such as domestic workers, workers in export-processing zones, workers in the public service, agricultural workers and workers in the informal economy, were not compatible with the realization of this principle and right (Cf. Paragraphs 12, 35 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2006 AR: The IDEAs observed the following: “It is important to note that the majority of workers in the United Arab Emirates and other Gulf States are migrant workers. Therefore, while we note that certain measures have been reported relating to this principle [...] we stress that the principle should be given full effect as regards all the workers present in these countries, including migrant workers, if these countries are to progress meaningfully in this area” (Cf. Paragraph 45 of the 2006 Annual Review Introduction – ILO: GB.295/5).</p> <p>2005 AR: The IDEAs listed the United Arab Emirates among the countries where progress had been made under the Annual Review in the promotion of freedom of association and the effective recognition of the right to collective bargaining. Furthermore, the IDEAs noted with interest the continuing efforts made by the countries of the Gulf Cooperation Council (Cf. Paragraphs 12 and 148 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2004 AR: The IDEAs were encouraged by the continuing steps taken by countries of the Gulf Cooperation Council (GCC) in relation to this PR, but noted that there was a long way to go and much to do. They further indicated that the Gulf Cooperation Council States were providing more information on the PR, but not enough on the other three PRs. This would help to illustrate the link between all four PRs. The IDEAs also wished that the positive measures taken by countries in the Gulf Cooperation Council (GCC) be expanded upon (Cf. Paragraphs 29 and 84 of the 2004 Annual Review Introduction – ILO: GB.289/4).</p> <p>2003 AR: The IDEAs commended the United Arab Emirates for their continuing dialogue with the Office. They also were encouraged to see the Government of the United Arab Emirates pointing out the needs in this country to strengthen the capacity building of workers' and employers' organizations and that it turned to the ILO for help (Cf. Paragraph 73 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p> <p>2002 AR: The IDEAs acknowledged, in particular, the high level dialogue and agreement on a plan of activities between the Office and the Government of United Arab Emirates (Cf. Paragraph 82 of the 2002 Annual Review Introduction – ILO: GB.283/3/1).</p> <p>2001 AR: The IDEAs hoped that the Government of the United Arab Emirates would continue a dialogue with the Office regarding the ways in which the PR could be achieved. They also recommended to the governing body that further information be requested from the Government of United Arab Emirates in relation to efforts made to promote the principle and right Cf. Paragraphs 30 (b) (ii) and 77 of the 2001 Annual Review Introduction – ILO: GB.280/3/1).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: UNITED STATES

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, except for the 2007 Annual Reviews (AR) and no change reports for the 2001 and 2002 ARs.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the United States Council for International Business and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) by means of consultation and communication of a copy of Government's reports. The updated report under the 2007 AR has been communicated to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the Change to Win Federation, and the U.S. Council for International Business. In addition, in keeping with longstanding practice, as well as U.S. obligations under the Tripartite Consultations (International Labour Standards) Convention, 1976 (No.144), the draft report was reviewed by members of the Tripartite Advisory Panel on International Labor Standards, a subgroup of the President's Committee on the ILO.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations		
	Workers' organizations	2009 AR: Observations by the International Trade Union Confederation (ITUC). 2008 AR: Observations by the AFL-CIO. Observations by the ITUC. 2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU). 2006 AR: Observations by the AFL-CIO. 2005 AR: Observations by the AFL-CIO. Observations by the ICFTU. 2004 AR: Observations by the AFL-CIO. 2003 AR: Observations by the AFL-CIO. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU. 2000 AR: Observations by the ICFTU	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	The United States has ratified neither the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) (C.87) nor the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98).

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

		Ratification intention	<p>There are no ongoing efforts to ratify C.87 and C.98</p> <p>2009 AR: According to the Government: No change.</p> <p>2004 AR: There are no ongoing efforts to ratify C.87 and C.98. The Government made this statement in September 2003 (Cf. GB.291/LILS/4 (November 2004, paragraph 13).</p> <p>2002 AR: According to the Government: There had been no development concerning ratification of C.87 and C.98 which was still under consideration (Cf. GB.291/LILS/7 (November 2001, paragraph 9).</p>
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>YES</p> <p>The First Amendment to the United States Constitution, adopted in 1791, provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances".</p>

		<p>Policy, legislation and/or regulations</p>	<ul style="list-style-type: none"> Policy <p>2000-2005 ARs: According to the Government: it is the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. This policy includes the concept that “sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the process of conference and collective bargaining between employers and the representatives of their employees” (29 U.S.C. §171(a)).</p> <p>Railways and airline employees are covered by the Railway Labor Act (RLA) (45 U.S.C. §§151-188), and are provided protections similar to those contained in the National Labor Relations Act (NLRA). The RLA expressly recognizes that employees “have the right to organize and bargain collectively through representatives of their own choosing,” prohibits a carrier from denying “the right of its employees to join, organize, or assist in organizing the labor organization of their choice,” and makes it unlawful for an employer to interfere in any way with the organization its employees... or to influence or coerce employees in an effort to induce them to join or remain or not join or not remain members of any labor organization...” (41 U.S.C. § 152).</p> <p>The right of employees of the United States Government, except members of the Armed Forces and certain national security agencies, to organize is governed by the Civil Service Reform Act of 1978 (CSRA) (5 U.S.C. §§ 7101-7135). The CSRA applies to almost all federal civilian employees, and provides that “each employee shall have the right to form, join, or assist any labour organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right” (5 U.S.C. § 7102). Postal workers are protected under the NLRA and provisions of the Postal Reorganization Act of 1970, as amended (39 U.S.C. §§ 1201-1209).</p> <p>State and local government employees are excluded from coverage of the NLRA, but they too are entitled to the protections of the United States Constitution described above. In addition, the state and local governments have a diverse variety of legislation covering freedom of association and collective bargaining by state and local employees: however, those laws cannot be inconsistent with fundamental constitutional guarantees of freedom of association.</p> <p>Private sector employees who are not covered by the RLA or the NLRA (primarily agricultural, domestic, and supervisory employees who are excluded from NLRA coverage under 29 U.S.C. §152(3)), are nonetheless protected by the First, Fifth and Fourteenth Amendments of the United States Constitution which, taken together, guarantee that workers are entitled to establish and join organizations of their own choosing, without previous authorization by or interference from either the Federal Government or the State Governments.</p> Legislation <p>2009 AR: According to the Government: Section 1106 of The National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, which was enacted into law on January 29, 2008, repealed the Department of Defense's authority to establish a new labor relations system for its civilian workforce. As a result, civilian employees of the Department of Defense remain covered under existing collective bargaining provisions of the Civil Service Reform Act.</p>
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		Basic legal provisions	(i) The First Amendment to the United States Constitution, 1791; (ii) the National Labor Relations Act (NLRA) (29 U.S.C. §§ 151-187) (1935); (iii) the Labor-Management Relations Act (1947); (iv) the Labor-Management Reporting and Disclosure Act (1959); (v) the Civil Service Reform Act (1978); (vi) the Norris-LaGuardia Act (1932); (vii) The Railway Labor Act (1926); (viii) the Postal Reorganization Act (1970); (ix) the Congressional Accountability Act (1995); and (ix) the Presidential and Executive Office Accountability Act (1996).	
		Judicial decisions	<p>2009 AR: According to the Government: In <i>National Treasury Employees Union v. Chertoff</i>, 452 F.3d 839 (D.C.Cir. 2006), the Department of Homeland Security (DHS) and the Office of Personnel Management filed a status report on February 15, 2008, with the U.S. District Court for the District of Columbia asking the Court to dismiss the lawsuit. As a result of the filing, the Court dismissed the case and DHS employees will remain covered under the existing labor relations rules for federal civilian employees.</p> <p>2008 AR: According to the Government: In <i>American Federation of Government Employees, AFL-CIO v. Gates</i>, 2007 WL 1452571 (D.C. Cir.2007), the Court of Appeals for the District of Columbia reversed the judgment of the District Court in <i>American Federation of Government Employees, AFL-CIO, v. Rumsfeld</i>, 422 F.Supp.2d 16 (D.D.C. 2006). In reversing the District Court's decision, the Court of Appeals upheld the Department of Defense (DoD) regulations implementing a new human resources management system, granting DoD temporary authority to curtail collective bargaining for DoD civilian employees through November 2009. According to the AFL-CIO: Many decisions by the National Labour Relations Board (NLRB) in 2006/2007 illustrate the assault on fundamental workers' rights. For example, in <i>Sacred Heart Medical Centre</i>, 347 NLRB No.48 (June 2006), the Board held that an employer could lawfully prevent nurses from wearing a button stating "RNs Demand Safe Staffing" in those parts of the medical facility where employees might encounter patients or their families. Other decisions: (i) <i>Roosevelt Medical Centre</i>, 348 NLRB No. 64 (Oct 2006) and <i>Bud Antle, Inc.</i>, 347 NLRB No.9 (May 2006) on the right to strike; (ii) <i>Airport 2000 Concessions</i>, 346 NLRB No.86 (April 2006), <i>Winkle Bus Company Inc.</i>, 347 NLRB No. 108 (August 2006), <i>Weldon, Williams & Lick</i>, 648 NLRB No. 45 (Sept 2006), <i>Medieval Knights, LLC</i>, 350 NLRB No.17 (June 2007) on unlawful management threatening statements and intimidating conducts and (iii) <i>Garden Ridge Management, Inc.</i>, 347 NLRB No. 13 (May 2006) regarding the employer's conduct blocking the negotiation of a first agreement and withdrawing the recognition of the unions' representative status.</p> <p>2007 AR: According to the Government: In <i>American Federation of Government Employees, AFL-CIO, v. Rumsfeld</i>, 422 F.Supp.2d 16 (D.D.C. 2006), the Court of Appeals enjoined the Department of Defense from implementing new personnel regulations. This decision has been appealed. In <i>National Treasury Employees Union v. Chertoff</i>, 452 F.3d 839 (D.C.Cir 2006), affirming, reversing and remanding <i>National Treasury Employees Union v. Chertoff</i>, 385 F. Supp.2d 1 (D.D.C.2005), the Court of Appeals invalidated portions of disputed personnel regulations. DHS did not appeal the ruling and plans to engage the DHS unions in further dialogue in order to redraft the regulations in compliance with the Court's ruling. Until DHS issues revised rules, DHS employees are still covered by the current federal civil service rules.</p> <p><i>District of Columbia National Treasury Employees Union v. Chertoff</i>, 385 F. Supp.2d 1 (D.D.C. 2005) <i>Hoffmann Plastic Compounds v. National Relations Board</i>, 535 US 137 (2002).</p>	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2003-2005 ARs: No Government's authorization is required to establish an employers' organization or to conclude collective agreements. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for all categories of employers.

			For Workers	2003-2005 ARs: No Government’s authorization is required to establish a workers' organization, or to conclude collective agreements. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for the following categories of workers: (i) medical professionals; (ii) teachers; (iii) agricultural workers; (iv) workers engaged in domestic work; (v) workers in export processing zones (EPZs) or enterprises/industries with EPZs status; (vi) migrant workers; (vii) workers of all ages; and (viii) workers in the informal economy. All workers in the public service can exercise freedom of association, but not the right to collective bargaining.
			Special attention to particular situations	NIL
			Information/ Data collection and dissemination	2000 AR: According to the Government: Several Government agencies publish a wide variety of information regarding their operations, including statistics and trends relating to their areas of responsibility. This material includes weekly, periodic and annual reports; summaries of cases; information on representation and unfair labour practice cases; information on mediation, arbitration and other alternative dispute resolution methods used to resolve labour-management issues; general information on United States labour law and enforcement of that law; and national labour force statistics, including collective bargaining agreements, major work stoppages, and union membership statistics.
		At international level	According to Government: There are no particular restrictions for the international affiliation of employers’ or workers’ organizations.	
		Monitoring, enforcement and sanctions mechanisms	2003 AR: According to the Government: The following measures have been implemented to promote and realize the principle and right (PR): (i) legal reform (labour law and other relevant legislation); (ii) inspection/monitoring mechanisms; (iii) penal, civil or administrative sanctions; (iv) special institutional machinery; and (v) capacity building of responsible Government officials. 2000 AR: According to the Government: Enforcement of most provisions of the NLRA is done by the National Labor Relations Board (NLRB), an independent General Counsel, and the judicial system. Disputes that cannot be resolved by the parties themselves are generally resolved through the use of mediation, conciliation and arbitration. The FMCS has authority to help resolve bargaining disputes between federal agencies and workers’ organizations. If a federal-sector dispute cannot be resolved voluntarily, either party may request the Federal Service Impasses Panel (FSIP) to consider the matter. The Federal Labor Relations Authority (FLRA) performs functions for federal employee labour organizations similar to those performed by the NLRB for private sector employees, including resolution of complaints of unfair labour practices and disputes over the scope of collective bargaining negotiations (5 U.S.C. §§ 7104-7105).	
	Involvement of the social partners	NIL		
	Promotional activities	2000 AR: According to the Government: the FMCS has outreach programs that include promotion of a wider understanding, acceptance and proper use of the collective bargaining process and third-party assistance in the prevention and constructive resolution of labour-management and other disputes.		
	Special initiatives/Progress	NIL		

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	NIL
		Workers' organizations	<p>2007-2009 ARs: The ICFTU raised the following additional challenges: (i) The NLRA excludes many categories from private sector employees from its scope, such as agricultural and domestic workers, supervisors, and independent contractors; (ii) at federal level, in the public sector, approximately 40 per cent of all workers are still denied basic collective bargaining rights and the statutes outlaw strikes; (iii) the law allows employers to replace striking workers permanently; (iv) employers have a legal right to engage in a wide range of anti-union tactics that discourage the exercise of freedom of association; (v) the penalties are too weak to deter employers who violate labour laws from doing it again; (vi) 2005 showed a disturbing trend of employers using the bankruptcy system to declare collective bargaining agreements no longer valid.</p> <p>2006 and 2008 ARs: According to the AFL-CIO: Actions on the part of the United States (U.S.) Government during the year 2005 continue an alarming trend of weakening workers' fundamental rights of freedom of association and collective bargaining. In <i>District of Columbia National Treasury Employees Union v. Chertoff</i>, 385 F. Supp.2d 1 (D.D.C. 2005), the Court opined that "collective bargaining has at least one irreducible minimum that is missing from the HR System: a binding contract." <i>Id.</i> at 17[2]. The Court's decision reveals the U.S. Government's so-called human resources management system for what it really is: a full-fledged and unprecedented assault on the fundamental rights of federal Government workers. In addition, decisions by the National Labor Relations Board (NLRB or Board) in 2005 severely curtailed workers' rights in the private sector.</p> <p>2005 AR: The AFL-CIO strongly disagreed with the draft update to the report on the PR. According to the AFL-CIO: (i) Legislation does not protect workers (e.g. the Homeland Security Act in 2002); (ii) other developments in 2004 threaten workers' fundamental rights, such as the National Labour Relations Board's decision to review the legality of the rules regarding majority verification and neutrality of procedures to form unions; (iii) the Department of Defense's employees are denied the right to collective bargaining under the Department of Defense Reauthorization Act, passed by Congress in 2003. According to the ICFTU: (i) Many categories of employees in the private sector are excluded from the right to freedom of association and the right to join trade unions; (ii) legal restrictions on the exercise of the PR; (iii) law also allows employers to replace striking workers permanently, and the statute of the 1978 Federal Labor Relations Act outlaws strikes for employees of the Federal Government; (iv) the U.S. Supreme Court ruled in 2002 that undocumented workers are not entitled to back pay as a remedy for unfair labour practices under the NLRA, and they are not entitled to reinstatement; (v) several restrictions have made difficult the enforcement of trade union rights on behalf of the millions of undocumented workers in the country.</p>

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Workers’ organizations	<p>2004 AR: The AFL-CIO stated the following: (i) The often glaring discrepancies between the rights guaranteed to workers in theory under United States law, and the failure to extend these same rights in actual practice; (ii) the situation has not improved since last year, and the conditions of undocumented workers are getting worse (e.g. <i>Hoffman Plastic Compounds v. National Labour Relations Board</i>, 535 US 137 (2002)).</p> <p>2003 AR: The AFL-CIO strongly disagreed with the draft update to the report on the PR. According to the AFL-CIO: (i) By admitting no vulnerabilities whatsoever in law or practice, the United States report entirely lacks perspective, analysis, and self-awareness; (ii) the draft Report gave the highly misleading impression that under the NLRA, virtually all categories of workers in the United States can exercise meaningfully their rights to freedom of association and collective bargaining; (iii) State and local legislation fails to cover in any significant way workers excluded from coverage under the NLRA, thus no statutory protection or enforcement of their two key collective rights; (iv) almost half of all states within the United States either fail to cover entirely, or leave significant gaps in coverage for, their Government workers; (v) lack of capacity of responsible Government institutions; (vi) 75 per cent of employers hire consultants to help them fight organizing drives; (vii) 78 per cent of employers force workers to attend one-on-one anti-union meetings with managers, and 92 per cent force employees to attend mandatory anti-union meetings; (viii) a quarter of all employers illegally fire at least one worker for union activity during an organizing campaign; (ix) and lack of sanctions against employers where the PR has not been respected.</p> <p>2000-2002 ARs: ICFTU’s observations: (i) One in ten union supporters campaigning to form a union is illegally fired; lack of protection of the trade union representatives against the employers; (ii) the procedures of the National Labor Relations Board (NLRB) do not provide workers with effective redress in the face of abuses by employers; (iii) trade union representatives are denied access to the employer’s property to meet employees during non-working time; (iv) the National Labor Relations Act requires the NLRB to seek injunctions in a federal court against trade unions committing certain kinds of unfair labour practices but there is no corresponding obligation when the unfair labour practices are committed by employers; (v) employers regularly challenge the results when the union wins a representation vote, regardless of the margin of victory; (vi) restrictive strikes right; (vii) there is little collective bargaining in the construction industry; (viii) should the company and the union reach an agreement during a strike, striking workers do not automatically return to work; (ix) national labour legislation does not cover agricultural or domestic workers and certain kinds of supervisory workers; (x) approximately 40 per cent of all public sector workers, nearly 7 million people, are still denied basic collective bargaining rights.</p>
	According to the Government	<p>2008 AR: The Department of Homeland Security (DHS) and the Department of Defense (DoD) each issued regulations in 2005 that implement legislation authorizing them to establish new human resources management systems. DHS published its final regulations in the <i>Federal Register</i> on February 1, 2005 (70 Fed. Reg. 5,272) and DoD published its final regulations on November 1, 2005 (70 Fed. Reg. 66,116). The validity of each of these regulations is the subject of ongoing litigation. A federal judge enjoined the labour-management portions of the DHS regulations on August 12, 2005 (<i>National Treasury Employees Union v. Chertoff</i>, 385 F.Supp. 2d 1(D.D.C. 2005)), and she declined to modify the injunctions on October 7 (394 F.Supp. 2d 137 (D.D.C. 2005)). These decisions have been appealed. No ruling has been made on the pending challenge to the DoD regulations, which was scheduled to take effect on February 1, 2006.</p> <p>In response to ITUC’s observations, the Government indicated that the information, that it has regularly submitted under the Declaration’s Annual follow-up, has shown that the Government is deeply committed to the basic principles that were reaffirmed in the ILO Declaration, and that the country’s law and practice reflect those principles.</p>	

TECHNICAL COOPERATION	Request	<p>2000 AR: According to the Government: To the extent that the ILO might be able to recommend relevant forms of tripartite technical cooperation, the United States would be interested in any such proposals.</p> <p>2003 AR: According to the AFL-CIO: Priority needs for technical cooperation to facilitate the realization of the PR in the United States exist in the following areas: (1) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle; (2) strengthening data collection and capacity for statistical analysis; (3) legal reform; and (4) capacity building of responsible Government institutions.</p>
TECHNICAL COOPERATION	Offer	NIL
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of United States (and three other governments) had indicated the current impossibility to ratify C.87 and C.98 without further justification (Cf. Paragraphs 12 and 29 of the 2008 Annual Review Introduction – ILO: GB.301/3). They also noted that restrictions on the rights of certain categories of workers in United States, such as workers in the public service and agricultural workers, to organize, were not compatible with the realization of this principle and right (Cf. Paragraphs 29 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The ILO Declaration Expert-Advisers (IDEAs) listed the United States among the four countries in which 52 per cent of the total labour force of ILO member States lives and which have not yet ratified C.87 and C.98. This leaves many millions of workers and employers without the protection offered by these instruments in international law, even if the governments concerned may consider that their law and practice are sufficient. (Cf. Paragraph 32 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The ILO Declaration Expert-Advisers listed the United States among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (paragraph 13 of the 2005 AR Introduction). They also considered that the example of regular and constructive contributions by AFL-CIO should be expanded upon, in particular among other national workers' organizations, as well as employers' organizations (Cf. Paragraph 190 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2009)¹: UZBEKISTAN

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, except for the 2000-2002 and 2004 Annual Reviews (ARs) and no change report for the 2007 AR.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Chamber of Commerce and Industry of Uzbekistan (CCIU) and the Federation of Trade Unions of Uzbekistan (FTUU) and the Executive Committee of the Federation of Trade Unions of Uzbekistan (CFTUU) and through communication of Government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the Chamber of Commerce and Industry of Uzbekistan (CCIU).	
	Workers' organizations	2008 AR: Observations by the FTUU. 2007 AR: Observations by the FTUU. 2006 AR: Observations by the FTUU.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Uzbekistan ratified in 1992 the Right to Organize and Collective Bargaining Convention (No. 98) (C.98). However, it has not yet ratified the Right to Organize Convention, 1948 (No. 87) (C.87).
		Ratification intention	<p>Under consideration for C.87</p> <p>2009 AR: According to the Government: Nationals are being reviewed to assess compliance with the provisions of C.87</p> <p>2008 AR: The Minister informed us that the Labour Code of Uzbekistan took into consideration the provisions all ILO fundamental Conventions and a draft Law on Ratification of the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) is expected to ratified very soon by the national Parliament after extensive consultations during which it had received the full support of other technical ministries and agencies and the employers' and workers' organizations. Ratification of the Freedom of Association and the Right to Organize Convention, 1948 (No. 87) will be considered.</p> <p>The CCIU supported ratification of C.87 and wishes to introduce international labour standards in the business.</p> <p>The FTUU also supported ratification of C.87.</p>

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: governments' reports, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	YES Article 56 of the Constitution relates to freedom of Association (FOA). 2008 AR: According to the Federation of Trade Unions of Uzbekistan (FTUU): the right of citizens to join trade unions, political parties and other public voluntary organizations is enshrined in Article 34 of the Constitution.	
		Policy/Legislation and/or Regulations	<ul style="list-style-type: none"> • Legislation The Labour Code (1996), the Law on Voluntary Organizations in the Republic of Uzbekistan (1991), the Law on Trade Unions, their Rights and Guarantees of their Activities (1992) and the Law on Non-Governmental and Non-Commercial Organizations (1999) relate to the principle and right (PR). 2006 AR: The Act on the Chamber of Trade and Industry of the Republic of Uzbekistan was passed on 3 December 2004. 2003 AR: On 21 August 2001, the Government adopted Resolution No. 347 on the “Development of Registration of Organizations and Enterprises”.	
		Basic legal provisions	(i) Constitution (articles 34, 56 and 59); (ii) the Labour Code (1996), (iii) the Law on Voluntary Organizations in the Republic of Uzbekistan (1991); (iv) the Law on Trade Unions, their Rights and Guarantees of their Activities (1992); (v) the Law on Non-Governmental and Non-Commercial Organizations (1999); and (vi) the Administrative Code.	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2005 AR: Government authorization is not required to establish employers’ organizations. 2003 AR: Prior government authorization is required to establish an employers’ organization. FOA can be exercised at enterprise, sector/industry, and international levels by all categories of employers.
			For Workers	2005 AR: Government authorization is not required to establish workers’ organizations. 2003 AR: Prior government authorization/approval is required to establish a workers’ organization. The PR can be exercised at enterprise, sector/industry, and international levels (only FOA can be exercised at national level) by the following categories of persons: (i) all workers in the public service; (ii) medical professionals; teachers; (iii) agricultural workers; (iv) workers engaged in domestic work; (v) workers in export processing zones (EPZs) or enterprises/industries with EPZs status; (vi) migrant workers; (vii) workers of 14 years old and over. Only workers in the informal economy are not recognized as having such rights.
			Special attention to particular situations	2003 AR: According to the Government: Women.

			Information, data collection and dissemination	<p>According to the Government: There is a lack of information and data.</p> <p>2008 AR: According to the FTUU: Fourteen regional agreements are currently in effect in the provinces and in the city of Tashkent. In the different economic sectors, there are 77 national sectoral agreements and 605 regional sectoral agreements. Collective agreements have been adopted in more than 178,000 enterprises, covering some 5,350,000 workers.</p>
		At international level		According to the Government: There are no particular restrictions for the international affiliation of employers' and workers' organizations.
	Monitoring, enforcement and sanctions mechanisms	<p>2005 AR: According to the Government: Where FOA has not been respected, section 49 of the Administrative Code provides for a penalty such as a fine.</p> <p>2003 AR: According to the Government: The following measures have been implemented in order to realize the PR: (i) legal reform (labour law and other relevant legislation); (ii) inspection/monitoring mechanisms; (iii) penal, civil or administrative sanctions.</p>		
	Involvement of the social partners	<p>2008 AR: The FTUU indicated that it has been undertaking joint measures in cooperation with the Ministry of Labour and Social Protection of the Population to act jointly with a view to regulating the labour market processes. It further adds that in recent years, the FTUU has made more than 300 proposals in the process of the drafting of 60 Bills and the majority of these proposals were adopted. Moreover, the trade unions are currently involved in the drafting of laws to strengthen the mechanism for enforcing citizens' rights and social guarantees. These laws include: (i) the Law on State social insurance against occupational injuries and diseases; (ii) the Law on Medical Insurance; (iii) the Law on the Social Protection of the Population; and (iv) a new version of the Law on Trade Unions.</p> <p>2005 AR: According to the Government: Tripartite discussions on specific measures to respect, promote and realize the PR have been held.</p>		
	Promotional activities	<p>2009 AR: According to the Government: An official of Ministry of Labour has participated in the Turin course on international labour standards and the Declaration (May 2008). On this occasion, matters relating to the principle and right were discussed among others.</p> <p>2008 AR: According to the CCIU: Freedom of association is also promoted among the small and medium enterprises (SMEs). Moreover, during several workshops on the FPRW, the issue of collective bargaining was tackled so as to allow supervisory action by employers' and workers' organizations. In addition, an Inter-Eurasian Trade Unions Conference on Labour Migration was held in October-November 2006, where the FTUU mentioned its intensive activity on the monitoring of child labour as a result of the integration of child labour provision in collective agreements.</p> <p>The FTUU indicated that training on workers' rights and obligations are organized on a regular basis with a comprehensive approach. Schools located in the rural areas of the country are also given equipment and training.</p> <p>2005 and 2007 ARs: According to the Government: The following measures have been implemented: (i) capacity building of responsible government officials; (ii) training of other government officials; and (iii) capacity building for employers' and workers' organizations.</p>		

	Special initiatives/Progress	2008 AR: According to the FTUU: 2007 was the year of social protection for workers and their families. Government support on this issue has increased. Moreover, it participates in the Monitoring Commission so as to see how the national programme is implemented and can also prepare a list of problems, make recommendations and consult the local authorities in order to take action. Credit unions also contribute to the PR by helping workers integrate the formal economy. Finally, fourteen regional agreements are currently in effect in the provinces and in the city of Tashkent. In the different economic sectors, there are 77 national sectoral agreements and 605 regional sectoral agreements. Collective agreements have been adopted in more than 178,000 enterprises, covering some 5,350,000 workers. 2006 AR: In accordance with Presidential Decree No. 3453 of 7 July 2004, the Chamber of Manufacturers and Entrepreneurs was reorganized, which led to the establishment of the Chamber of Trade and Industry of Uzbekistan. 2003 AR: According to the Government: A major change has been introduced in 2001 through the establishment of an easier registration process for organizations.	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	2008 AR: There are no workers' organizations and the PR is not enjoyed in the informal economy.
		Workers' organizations	2007 AR: No particular challenges had been raised by the Council of the Federation of Trade Unions of Uzbekistan.
	According to the Government	2005 AR: According to the Government: There is a lack of capacity of responsible government institutions and employers' and workers' organizations.	
TECHNICAL COOPERATION	Request	2008 AR: According to the CCIU: ILO technical assistance is required for capacity building of employers' in the SMEs. 2003-2005 ARs: According to the Government: There is a need for ILO technical cooperation to facilitate the realization of the PR in Uzbekistan, in particular in the following areas, in order of priority: (1) assessment in collaboration with the ILO of the difficulties identified and their implications, for realizing the principle; awareness raising, legal literacy and advocacy; strengthening data collection and capacity for statistical analysis; sharing of experiences across countries/regions; training of other officials; strengthening capacity of employers' organizations; strengthening tripartite social dialogue, (2) capacity building of responsible government institutions; strengthening capacity of workers' organizations; (3) legal reform (labour law and other relevant legislation).	
	Offer	NIL	
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	2008 AR: The ILO Declaration Expert-Advisers (IDEAs) noted that some countries facing structural difficulties, such as Uzbekistan (and three other countries), were able to report with ILO assistance (Cf. Paragraph 25 of the 2008 Annual Review Introduction – ILO: GB.301/3). 2003 AR: The IDEAs were encouraged to see the Government of Uzbekistan pointing out the needs in this country to strengthen the capacity building of workers' and employers' organizations and that it turned to the ILO for help. In light of requests by Uzbekistan for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, they called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field. (Cf. Paragraphs 73 and 74 of the 2003 Annual Review Introduction – ILO: GB.286/4).		
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL		



GENERAL OBSERVATION BY THE INTERNATIONAL ORGANISATION OF EMPLOYERS (IOE) UNDER THE 2009 ANNUAL REVIEW¹

As in the 2008 Annual Review, the IOE sent a statement outlining its position and activities with regard to the Declaration and its follow-up, which is reproduced here *in extenso*.

Throughout the last ten years the International Organisation of Employers (IOE) has supported the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. During the adoption of the Declaration, the Employers expressed the challenge and opportunity that such an instrument represented in order to establish the ILO as the primary multilateral organization on social issues.

[2008] commemorates the tenth anniversary of the adoption of the Declaration and the IOE would like to reiterate its commitment to the principles enshrined in the Declaration, the relevance of which continues to increase as it has done during the last ten years.

The IOE continues to support the Declaration and its Follow-up. In this connection the process that concerns us is the Annual Follow-up concerning Non-Ratified Fundamental Conventions ("the Annual Review").

This communication intends to give an overview of the efforts the IOE undertook during 2007 and 2008 to promote the Declaration and its four principles.

For a better understanding, our comments are divided into three parts:

- I. IOE efforts to support the Declaration
- II. IOE initiatives in relation to the four fundamental principles
- III. Areas of concern

I. IOE efforts to support the Declaration

Ten years after its creation, the Declaration – an instrument created as an initiative of the Employers' group within the ILO – remains as a relevant tool for employers, and the IOE remains firmly committed to ensuring its success.

We have been involved in promoting and supporting the Declaration throughout the last ten years. The following are some examples of ways in which our commitment was translated into action in 2007 and 2008.

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and the ILO Governing Body.

1. *IOE position paper: The ILO Declaration on Fundamental Principles and Rights at Work*

The IOE continues its efforts to further raise the profile and the utility of the Declaration. The IOE Position Paper on the Declaration, adopted in 2006, guides its work in this respect. We encourage our members to link activities at national level with the principles of the Declaration and provide it with profile where opportunities arise.

2. *New IOE products*

[In 2008], the IOE released the second edition of its *International Labour and Social Policy Review*. The Review, released in June, covers articles affecting the Declaration in the following ways: youth employment, trends in collective bargaining and HIV/AIDS in the workplace.

[2008] also marked the release of a new IOE product: Trends in the Workplace Survey 2008. The Survey was targeted at member organizations of the IOE. More than two-thirds of our members responded to the Survey and numerous pieces of information emerged from it relating to the Declaration and its four principles: migrants; gender implications; collective bargaining trends.

This Survey is anticipated to become an annual survey of Trends in the Workplace by the IOE. As of March 2008, we have been working on the new Survey 2009, trying to expand on topics of interest that emerged from the Survey 2008. Many of those topics relate to the principles of the Declaration, such as women in the labour market, migrants in the labour market, older workers in the labour market.

3. *The Global Report and ILC discussions*

The Global Report and its ILC discussions continue to be viewed by the IOE as effective promotional tools for the Declaration. These discussions represent an excellent opportunity for employers' organizations to become actively engaged in the Declaration, since the issues that are addressed in the report directly affect them.

In preparation for the 2008 ILC, the IOE organized a meeting with government representatives to share and present the views of the Employers' group on the different items of the 2008 ILC. A presentation on the upcoming Global Report *Freedom of Association in practice: Lessons learned* was made to present the areas of interest and concern for the group. The importance of the Declaration for the Employers' group was once again highlighted.

The IOE, as the secretariat of the Employers' group at the ILC, coordinated the participation of more than ten employer delegates in the [year 2008]'s debate. We worked closely with the Employer spokesperson and the speakers in order to present the views, positions and concerns of employers.

Preparatory work for this debate involved consultations with members, ACT/EMP, the Employer spokesperson, the Declaration department and the Workers' group. Notes were also prepared for the Employers' group, containing the most relevant points of interest of the Global Report and eventual points of discussion to enrich the debate.

As part of the preparations of the Global Report discussion and the promotion of the Declaration, the IOE coordinated a session on "*The future of the Declaration*". The meeting was programmed during the Employers' group session on 3 June. As [2008] year marked the tenth anniversary of the Declaration, the IOE considered this meeting as a special opportunity to hold a session to discuss the objectives of the Declaration, the lessons learnt during the past ten years and, most importantly, its future. Mr. Kari Tapiola, ILO Executive Director and yourself kindly accepted our invitation to address the group.

4. Corporate Social Responsibility (CSR)

The prominence and importance of CSR continue to increase, as did the significance of the Declaration as a useful reference point in the debate.

The IOE, through its CSR Working Group, continues to provide guidance to its members about how to apply and support the Declaration in this context. The Working Group meets three times per year. In 2007 it met on March, June and November to discuss various topics and new CSR initiatives.

The IOE coordinates the participation of its members in the International Organization for Standardization (ISO) Working Group on Social Responsibility. [In 2008], the sixth Working Group meeting was held in Santiago, Chile, at which the IOE was represented. Information about this meeting was sent to all IOE members.

As part of its secretarial support within the ILO MNE Subcommittee, the IOE has been deeply involved in the CSR courses developed by the ILO ITC in Turin.

The IOE, in collaboration with two leading global industrial law practices, Ius Laboris and Baker & McKenzie, will hold a World Conference on Globalization and the Future of Labour Law. The event, which will be hosted by the French Business Confederation (MEDEF) and held in Paris on 24 and 25 November 2008, will have various sessions related to CSR, such as: Session 4: *The impact of Corporate Social Responsibility on Labour Law* and Session 5: *The Role of Codes of Conduct and International Framework Agreements*.

At the beginning of 2008, the IOE undertook an analysis of International Framework Agreements (IFAs). The emergence of IFAs in the last 20 years provides an opportunity to analyse their content and identify some of their common and emerging trends. The paper presents some general points about the signatory companies and GUFs when an agreement is reached. It continues by identifying the common trends on the substantive and procedural provisions of the publicly available IFAs.

An interesting finding was that the model of an IFA is built around the fundamental principles at work, which are drawn from the eight core Conventions (C. Nos 87 and 98, 29 and 105, 138 and 182, 100 and 111)². All of the 51 IFAs reviewed refer to the respect of the four fundamental principles.

This analysis was presented to the IOE Global Industrial Network, which is composed of 25 multinational companies, during its meeting in 2008 and during the IOE CSR Working Group in June.

5. The Global Compact

The Global Compact's labour principles are drawn from the ILO Declaration. The IOE continues to be actively involved in the promotion of the Global Compact. In addition, the IOE Secretary-General is a member of the Board.

In June 2008, the IOE organized the first meeting of the Global Compact Labour Working Group. As a result of this meeting, a resource guide on labour principles will be developed and the IOE has been highly involved in this initiative.

² Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); the elimination of child labour: Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labour Convention, 1999 (No. 182). Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Equal Remuneration Convention, 1951 (No. 100).

II. IOE initiatives in relation to the four fundamental principles

In addition to our involvement in the promotion of the Declaration, we actively promote and support each of the four fundamental principles. Below are some of our promotional efforts through the year.

■ *Freedom of association and the effective recognition of the right to collective bargaining*

The IOE's main means of engagement in relation to freedom of association remains the Governing Body Committee on Freedom of Association (CFA). The IOE continues to work closely with the Employer members of the CFA to ensure that the work of the Committee remains relevant to employers.

[Reference is made to a case pending before the ILO Committee on Freedom of Association.]

In addition, the IOE continues to assist employers' organizations that do not fully enjoy freedom of association. We provide assistance, guidance and support to ensure that this fundamental principle is respected.

Whilst freedom for employers prevails in many countries of the world and is largely taken for granted, developments in other parts of the world continue to threaten those rights, requiring the attention of the Employers' group and the IOE.

■ *The elimination of all forms of forced or compulsory labour*

The IOE has actively been working with the ILO/DECLARATION Special Action Programme to combat Forced Labour (SAP–FL) on the development of the publication: *Combating Forced Labour: A Handbook for Employers and Business*.

Early in the year, the IOE addressed a major UN meeting on forced labour and trafficking held in Vienna and presented the challenges for employers regarding this issue.

In February 2008, the IOE, ILO, US Council for International Business and the US Chamber of Commerce held a one-day meeting to raise the profile of the principle of the elimination of forced labour with multinational US companies. The event was hosted by Coca-Cola in Atlanta and attracted more than 80 participants coming from the private sector, international organizations and NGOs. During this discussion, a number of questions arose concerning the definition of forced labour and what may or may not fall within that definition. In order to assist participants in answering those questions, the IOE is developing material covering key elements drawn from ILO instruments. By addressing six key questions, these key elements are brought to the attention of business to guide its responses when addressing forced labour.

In May 2008, the IOE Deputy Secretary-General participated as a keynote speaker at the Anti-Slavery International event on *Is there slavery and forced labour in your supply chain?* The presentation highlighted the challenges of identifying and eradicating forced labour from the point of view of employers.

During the ILC, the IOE, as the Employers' group secretariat, coordinated a session on Forced Labour, Human Rights and Enterprises. [] Head of the [ILO/SAP-FL/DECLARATION] was invited to address the Employers' group. We consider this as a special opportunity to discuss the issue of forced labour and the role of employer organizations.

The IOE also actively collaborated with [ILO/SAP-FL/DECLARATION] in the coordination and organization of the *Regional workshop on addressing forced labour: the role of employers' organisations and business* that took place in Bangkok in June 2008. In addition, the IOE coordinated the participation of employer organizations in the region. The objective of the workshop was to provide a space for employer representatives to develop strategies and action plans to address forced labour, exchange information and experiences, as well as for the IOE and ILO to present the tools they are currently developing.

In developing work in this area, the IOE is producing a Guide which is a first attempt to clarify some of the questions surrounding the issue. It draws the attention of employers and their members to the risks forced labour represents within their operations, giving guidance on how to identify and prevent situations of forced labour and providing some direction on what employers can do to address the matter. The Guide has been developed in the context of a global strategy to engage employers and their organizations on the issue and it is expected to be a useful tool for employers' organizations and their members.

■ *The effective abolition of child labour*

The IOE supports the participation of the Employers' group and the Employer spokesperson of the IPEC Steering Committee.

Recognizing that there were no practical guidelines specifically drafted for employers to address child labour within their workplaces or their supply chain, the IOE and ACT/EMP worked on a set of Guides for employers. The Guides for Employers on Eliminating Child Labour were released in 2007, and during 2008 a series of activities have been organized to release the Guides. The Guides have been translated into Spanish and French and it is expected that translations into Portuguese, Russian and Arabic will follow in the next few months.

The IOE actively collaborated with ACT/EMP on the coordination of the Latin American and Caribbean Business Conference against Child Labour. The event, jointly organized with IPEC and the Argentinean employer organization (UIA), was held in Buenos Aires in October 2008. The meeting included a workshop where the IOE-ACTEMP Guides were launched in Spanish. The main objective of the meeting was to strengthen the capacities of employers' organizations and enterprises through training in the use of the Employers' Guide. The Conference also promoted a subregional exchange of information on good business practices against child labour and showcased success stories of business promoting the eradication of child labour.

■ *The elimination of discrimination in respect of employment and occupation*

The IOE is actively involved both directly and indirectly in addressing various forms of discrimination. The following are key examples of our involvement:

The IOE continues to be actively involved in addressing the issue of HIV/AIDS, which is a critical issue with potentially grave consequences for the world of work. While it is important to tackle it in regions that are currently severely affected, HIV/AIDS must also be addressed in regions/areas where it has not yet reached dramatic proportions but has the potential to do so.

Youth employment continues to be a key feature of the work of the IOE. The IOE has been working jointly with the ILO in the development of a Toolkit, which is a compendium of interventions used by the business community globally. Its objective is to be a shared resource in helping to generate employment opportunities for young people.

III. Areas of concern

Our support for the Declaration, its Follow-up and the four fundamental principles remain clear throughout our activities. However, we take this opportunity to highlight particular concerns to the IOE and the Employers' group of the ILO in relation to the Declaration and its Follow-up.

1. Strengthening the ILO's capacity to assist its members' efforts to reach its objectives in the context of globalization

During the 2008 ILC, the ILO *Declaration on Social Justice for a Fair Globalization* was unanimously adopted. The text reaffirms the principles of the 1944 Declaration of Philadelphia as well as those contained in the 1998 Declaration on Fundamental Principles and Rights at Work. The IOE and the Employers' group of the ILO will continue defending the promotion of the 1998 Declaration, highlighted in the preamble of the new Declaration.

During the upcoming consultations and Steering Group meetings, the IOE and the Employers' group will insist on the fact that confirmation is needed with regard to the continued separate promotion of the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up.

2. National baselines analysis

We strongly support the baseline approach. It represents a creative and innovative way to use the information gathered through the Annual Review. We have reiterated this support during the Governing Body discussions in the framework of the Annual Review.

It is important that this analysis not be allowed to turn into a ranking tool between countries. The baselines should be continued as a useful tool to track the advancement of the efforts of member States over time – not against externally imposed standards, but against their own progress. Consistent with the spirit and intent of the Declaration, each member State must be allowed to give effect to the four fundamental principles in a manner that is nationally appropriate. It remains to be seen what impact these analyses have.

3. The obligations created under the Declaration

The assessment under the Annual Review should focus on the steps taken by member States to give effect to the fundamental principles. This assessment should not involve a discussion of law and practice. The employers repeatedly raise the fact that the Declaration and its Follow-up is a political track, not a legal track like the ILO's regular supervisory machinery. The political obligations required to promote, achieve and realize the principles under the Declaration must remain distinct from the specific legal obligations undertaken through the ratification of a Convention.

4. Ratification of core Conventions

The IOE and the Employers' group have expressed their concern about the emphasis on ratification of the core Conventions throughout the Declaration's Follow-up. The Declaration is a political instrument, and the emphasis should be properly placed on the efforts of member States (and their successes and challenges) in giving effect to the four fundamental principles.

The Declaration is supposed to provide a vehicle through which focus can be given to the respect for the Fundamental principles. This means that, instead of looking at whether member States have complied with the letter of each article of a Convention, it looks at the efforts that have been made by the member States to give effect to the principle.

5. *Capacity building of employers' organizations and technical cooperation*

The Declaration can only be effectively promoted within strong constituents. Attention must be paid to using the Declaration Follow-up to build the capacity of employers' organizations to help improve the voice of business and strengthen the spirit of tripartism and social dialogue.

Resources should be set aside for the development of technical cooperation programmes that specifically target employers' organizations. Donors should also be encouraged to devote a portion of their funding towards the capacity-building of the social partners.

6. *The tenth year anniversary of the Declaration*

With every passing year since the adoption of the Declaration in 1998, we continue to learn more about what aspects of its follow-ups are useful and effective in achieving their aims and which aspects demonstrate room for improvement.

The tenth year anniversary of the ILO Declaration in 2008 presents a useful opportunity to address the follow-ups with a view to finding ways to strengthen them. Using what has been learned over the past ten years may help us to refine follow-ups to ensure that they remain relevant.

The Declaration remains an outstanding example of how the ILO should and can react to pressing social issues through its unique process of consensus building. We appreciate this opportunity to provide feedback and remain available to answer any questions arising from this document.



Observation générale de l'Organisation internationale des employeurs (OIE) aux fins de l'examen annuel de 2009 ¹

Comme pour l'examen annuel de 2008, l'OIE a fait parvenir au Bureau une communication (reproduite ci-après in extenso) indiquant sa position et les activités qu'elle a menées en rapport avec la Déclaration et son suivi.

Tout au long de la décennie écoulée, l'Organisation internationale des employeurs (OIE) a œuvré en faveur de la Déclaration de l'OIT relative aux principes et droits fondamentaux au travail, 1998, et de son suivi. Au moment de l'adoption de la Déclaration, les employeurs ont fait observer que cet instrument représentait à la fois un pari difficile et une chance pour l'OIT de devenir la principale organisation multilatérale chargée des questions sociales.

Deux mille huit étant l'année du 10^e anniversaire de l'adoption de la Déclaration, l'OIE souhaite réaffirmer son engagement envers les principes consacrés par celle-ci dont l'importance n'a cessé de croître depuis dix ans.

L'OIE continue d'apporter son soutien à la mise en œuvre de la Déclaration et de son suivi, pour ce qui est notamment du suivi annuel concernant les conventions fondamentales non ratifiées («l'examen annuel»).

La présente communication offre une vue d'ensemble des efforts que l'OIE a déployés au cours de 2007 et de 2008 pour promouvoir la Déclaration et ses quatre principes.

Par souci de clarté, nous avons réparti nos observations sous trois rubriques:

- I. Efforts déployés par l'OIE pour promouvoir la Déclaration
- II. Initiatives de l'OIE relatives aux quatre principes fondamentaux
- III. Domaines de préoccupation

I. Efforts déployés par l'OIE pour promouvoir la Déclaration

Dix ans après son élaboration, la Déclaration, née de l'initiative du groupe des employeurs dans le cadre de l'OIT, reste pour les employeurs un outil important que l'OIE est toujours fermement décidée à faire appliquer.

Nous avons pris une part active dans la promotion et le soutien de la Déclaration tout au long de ces dix dernières années, et notre engagement dans la pratique s'est traduit en 2007 et 2008 notamment de la manière suivante:

¹ Les bases de référence par pays, utilisées aux fins de l'examen annuel au titre de la Déclaration, sont fondées sur les éléments ci-après dans la mesure où ils sont disponibles: les renseignements fournis par les gouvernements dans le cadre de l'examen annuel, les observations des organisations d'employeurs et de travailleurs, les études de cas réalisées sous les auspices du pays et de l'OIT et les observations/recommandations des Experts-conseillers sur la Déclaration et celles du Conseil d'administration du BIT.

1. *Position de l'OIE concernant la Déclaration de l'OIT relative aux principes et droits fondamentaux au travail*

L'OIE a poursuivi ses efforts pour améliorer la visibilité et l'utilité de la Déclaration. La position qu'elle a adoptée en 2006 concernant la Déclaration guide ses travaux en la matière. Nous encourageons nos membres à lier leurs activités au niveau national avec les principes de la Déclaration et à appeler l'attention sur celle-ci lorsque l'occasion se présente.

2. *Nouvelles publications de l'OIE*

En juin 2008, l'OIE a publié le deuxième numéro de sa revue intitulée *International Labour and Social Policy Review*, laquelle contient des articles en rapport avec la Déclaration dans les domaines suivants: l'emploi des jeunes, les tendances en matière de négociation collective, et le VIH/sida dans le monde du travail.

Deux mille huit a été également l'année de la sortie d'une nouvelle publication de l'OIE: un rapport intitulé *Trends in the Workplace Survey 2008*. Cette enquête sur les tendances dans le monde du travail qui visait les organisations membres de l'OIE a permis de recueillir les réponses de plus des deux tiers d'entre elles. Parmi les nombreux éléments d'information qui en ont été tirés, un grand nombre se rapportait à la Déclaration et à ses quatre principes: migrants, incidences sur l'égalité entre les sexes, tendances en matière de négociation collective.

Cette enquête devrait devenir une enquête annuelle de l'OIE. En mars 2008, nous avons commencé à travailler sur la nouvelle enquête pour 2009 en essayant de l'élargir aux questions intéressantes qui se sont dégagées de l'enquête 2008. Bon nombre de ces questions se rapportaient aux principes de la Déclaration, notamment pour ce qui est de la situation des femmes, des migrants et des travailleurs âgés sur le marché du travail.

3. *Le rapport global et les discussions de la Conférence internationale du Travail*

L'OIE est toujours d'avis que le rapport global et les discussions à son sujet dans le cadre de la Conférence constituent des outils efficaces de promotion de la Déclaration. Les discussions offrent une excellente occasion aux organisations d'employeurs de prendre une part active aux travaux portant sur la Déclaration, étant donné qu'un grand nombre d'entre elles sont directement concernées par les questions traitées dans le rapport global.

En vue de la session de 2008 de la Conférence, l'OIE a organisé une réunion avec des représentants des gouvernements pour présenter les vues du groupe des employeurs sur les différentes questions à l'ordre du jour de la session. Lors d'une présentation du rapport global intitulé *Liberté d'association: enseignements tirés de la pratique*, les sujets d'intérêt et les préoccupations du groupe ont été évoqués, et l'importance de la Déclaration pour le groupe a été une nouvelle fois soulignée.

Dans le cadre de ses fonctions de secrétariat du groupe des employeurs à la Conférence, l'OIE a coordonné la participation de plus de dix délégués employeurs aux débats de 2008. L'OIE a travaillé en étroite collaboration avec le porte-parole des employeurs et les orateurs afin de présenter les vues, les positions et les préoccupations des employeurs.

Dans le cadre de travaux préparatoires en vue des discussions, des consultations ont été tenues avec les membres, ACT/EMP, le porte-parole des employeurs, le département chargé de la Déclaration et le groupe des travailleurs. Par ailleurs, des notes reprenant les points les plus importants du rapport global et les éventuels points appelant une discussion ont été élaborées à l'intention du groupe des employeurs pour alimenter le débat.

En vue de l'examen du rapport global et de la promotion de la Déclaration, l'OIE a organisé une session sur l'avenir de la Déclaration. La réunion a été programmée pendant la session du 3 juin du groupe des employeurs. Etant donné que 2008 marque le 10^e anniversaire de la Déclaration, l'OIE a estimé que cette réunion offrait une occasion particulière d'examiner les objectifs de la Déclaration, les enseignements tirés des dix dernières années et, ce qui est le plus important, son avenir. M. Kari Tapiola, directeur exécutif au BIT, et vous-même avez accepté notre invitation à venir prendre la parole devant le groupe.

4. *Responsabilité sociale de l'entreprise (RSE)*

La responsabilité sociale de l'entreprise (RSE) est un sujet qui prend de l'importance, tout comme la Déclaration qui constitue un instrument de référence utile aux débats.

L'OIE, par l'intermédiaire de son groupe de travail sur la RSE, a continué à donner des orientations à ses membres sur la façon de mettre en œuvre et de promouvoir la Déclaration dans ce domaine. Le groupe de travail se réunit trois fois par an. En 2007, il s'est réuni en mars, juin et novembre pour examiner plusieurs questions et de nouvelles initiatives en matière de RSE.

L'OIE coordonne la participation de ses membres au Groupe de travail de l'Organisation internationale de normalisation (ISO) sur la responsabilité sociale. En 2008, la sixième réunion du groupe de travail s'est tenue à Santiago au Chili, réunion à laquelle l'OIE a été représentée. Des informations sur cette réunion ont été communiquées à tous les membres de l'OIE.

Dans le cadre des services de secrétariat qu'elle assure à la Sous-commission sur les entreprises multinationales, l'OIE a pris une large part dans les cours de formation sur la RSE mis au point par le Centre international de formation de l'OIT à Turin.

L'OIE, en collaboration avec deux grands cabinets juridiques internationaux, lus Laboris et Baker & McKenzie, tiendra une conférence mondiale sur la mondialisation et l'avenir du droit du travail. La conférence qui sera organisée par le Mouvement des entreprises de France (MEDEF) se tiendra à Paris les 24 et 25 novembre 2008 et aura à son programme plusieurs sessions se rapportant à la RSE. Ainsi, par exemple, la session 4 sera consacrée à l'incidence de la responsabilité sociale de l'entreprise sur le droit du travail et la session 5 au rôle des codes de conduite et des accords-cadres internationaux.

Au début de l'année 2008, l'OIE a entrepris une analyse des accords-cadres internationaux (ACI) qui ont été conclus ces vingt dernières années de façon à en examiner la teneur et à en recenser les tendances communes et nouvelles. Le document présente certaines caractéristiques générales des sociétés signataires et des fédérations syndicales internationales concluant ces accords. Il définit par ailleurs les tendances communes concernant les dispositions de fond et de procédure des ACI qui sont accessibles au public.

La conclusion intéressante est que le modèle d'un accord-cadre international reprend les principes fondamentaux relatifs au travail, tirés des huit conventions principales sur le sujet (conventions n^{os} 87 et 98, 29 et 105, 138 et 182, 100 et 111 ²). Les 51 accords-cadres internationaux examinés font tous référence au respect des quatre principes fondamentaux.

² Convention (n^o 87) sur la liberté syndicale et la protection du droit syndical, 1948, convention (n^o 98) sur le droit d'organisation et de négociation collective, 1949, convention (n^o 29) sur le travail forcé, 1930, convention (n^o 105) sur l'abolition du travail forcé, 1957, convention (n^o 138) sur l'âge minimum, 1973, convention (n^o 182) sur

Cette analyse a été présentée au *Global Industrial Relations Network* de l'OIE, composé de 25 sociétés multinationales, au cours de sa réunion de 2008 et également en juin, lors de la réunion du groupe de travail de l'OIE sur la RSE.

5. *Le Pacte mondial*

Les principes du Pacte mondial concernant le travail sont tirés de la Déclaration de l'OIT. L'OIE continue de prendre une part active à la promotion du pacte. En outre, le Secrétaire général de l'Organisation est membre du Conseil du Pacte mondial.

En juin 2008, l'OIE a organisé la première réunion du Groupe de travail du Pacte mondial sur le travail. Suite à cette réunion, un manuel sur les principes relatifs au travail va être mis au point, une initiative à laquelle l'OIE a beaucoup contribué.

II. **Initiatives de l'OIE relatives aux quatre principes fondamentaux**

Outre notre engagement dans le cadre de la promotion de la Déclaration, nous nous employons activement à favoriser la mise en œuvre de chacun des quatre principes fondamentaux et à les défendre. Certains des efforts que nous avons déployés en ce sens tout au long de l'année sont décrits ci-après.

■ *Liberté d'association et reconnaissance effective du droit de négociation collective*

Le principal moyen d'action de l'OIE en ce qui concerne la liberté d'association s'inscrit dans le cadre du Comité de la liberté syndicale du Conseil d'administration. L'OIE continue de travailler en étroite collaboration avec les membres employeurs de ce comité pour s'assurer que les activités de ce dernier restent pertinentes pour les employeurs.

[Il est fait mention d'un cas en instance au Comité de la liberté syndicale de l'OIT.]

En outre, l'OIE continue de prêter main forte aux organisations d'employeurs qui ne jouissent pas totalement de la liberté d'association. Nous apportons assistance, conseils et appui pour faire en sorte que ce principe fondamental soit respecté.

Les employeurs jouissent de la liberté dans de nombreux pays, ce qui dans l'ensemble est considéré comme un fait acquis, mais des événements survenant dans d'autres parties du monde continuent de menacer les droits en question et appellent l'attention du groupe des employeurs et de l'OIE.

■ *Elimination de toute forme de travail forcé ou obligatoire*

L'OIE a contribué de manière active au Programme d'action spécial pour combattre le travail forcé (SAP-FL), qui relève du Programme pour la promotion de la Déclaration (OIT/DECLARATION), œuvrant à l'élaboration de la publication intitulée: *Combating forced labour: A handbook for Employers and Business*.

les pires formes de travail des enfants, 1999, convention (n° 111) concernant la discrimination (emploi et profession), 1958, et convention (n° 100) sur l'égalité de rémunération, 1951.

Au début de l'année, l'OIE a pris la parole à l'occasion d'une importante réunion des Nations Unies sur le travail forcé et la traite des êtres humains organisée à Vienne et y a exposé les défis que doivent relever les employeurs dans ce domaine.

En février 2008, l'OIE, le BIT, le Council for International Business des Etats-Unis et la Chambre de commerce des Etats-Unis se sont réunis une journée entière pour sensibiliser les entreprises multinationales des Etats-Unis au principe de l'élimination du travail forcé. Cette initiative, organisée sous l'égide de Coca-Cola à Atlanta, a attiré plus de 80 participants venant du secteur privé, des organisations internationales et des organisations non gouvernementales. Au cours de la discussion qui s'est tenue, un certain nombre de questions ont été soulevées au sujet de la définition du travail forcé et de ce qui peut relever ou non de cette définition. Afin d'aider les participants à répondre à ces questions, l'OIE élabore actuellement des matériels portant sur des éléments clés extraits des instruments de l'OIT. Six questions clés ont été abordées, qui permettent d'attirer l'attention des entrepreneurs sur ces éléments clés et de les guider dans les solutions qu'ils apporteront lorsqu'ils seront confrontés au travail forcé.

En mai 2008, le secrétaire général adjoint de l'OIE a participé, en tant qu'orateur principal, à une manifestation de portée internationale contre l'esclavage, intitulé *Is there slavery and forced labour in your supply chain?* (Y a-t-il des pratiques d'esclavage et de travail forcé dans votre chaîne d'approvisionnement?). L'exposé a mis en lumière les défis que représentent pour les employeurs le fait de repérer les pratiques de travail forcé et de les éradiquer.

Au cours de la Conférence internationale du Travail, l'OIE, en sa qualité de secrétariat du groupe des employeurs, a coordonné une session sur le travail forcé, les droits de l'homme et les entreprises. [], chef de [OIT/SAP-FL/DECLARATION], a été convié à prendre la parole devant le groupe des employeurs. Cela nous est apparu comme une bonne occasion de débattre de la question du travail forcé et du rôle des organisations d'employeurs.

L'OIE a également pris une part active, en collaboration avec [OIT/SAP-FL/DECLARATION], à la coordination et à l'organisation de l'*Atelier régional sur la lutte contre le travail forcé: Rôle des organisations d'employeurs et des entreprises*, qui s'est déroulé à Bangkok en juin 2008. En outre, elle a coordonné la participation des organisations d'employeurs dans la région. L'objectif de cet atelier était d'offrir l'occasion aux représentants des employeurs d'élaborer des stratégies et des plans d'action pour lutter contre le travail forcé, échanger des informations et des données d'expérience, ainsi que, pour ce qui est de l'OIE et du BIT, de présenter des outils actuellement en cours d'élaboration.

Dans le cadre des activités menées dans ce domaine, l'OIE a entrepris de produire un guide pour, dans un premier temps, tenter de clarifier certaines des questions en la matière. Il appelle l'attention des employeurs et de leurs membres sur les risques que le travail forcé fait peser sur leurs activités, donnant des indications sur la façon de repérer et de prévenir des situations de travail forcé et formulant des recommandations sur les mesures que peuvent prendre les employeurs pour remédier à ces situations. Le guide s'inscrit dans le cadre d'une stratégie globale qui vise à impliquer les employeurs et leurs organisations dans ce domaine et qui devrait constituer un outil intéressant pour les organisations d'employeurs et leurs membres.

■ *Abolition effective du travail des enfants*

L'OIE encourage la participation du groupe des employeurs et du porte-parole des employeurs du comité directeur du Programme international pour l'abolition du travail des enfants (IPEC).

Conscients de l'absence de directives pratiques élaborées spécifiquement à l'intention des employeurs pour lutter contre le travail des enfants dans leurs lieux de travail ou dans leurs chaînes d'approvisionnement, l'OIE et ACT/EMP ont travaillé à l'élaboration d'un ensemble de guides à l'intention des employeurs. Ces guides, sur l'abolition du travail des enfants, ont été publiés en 2007, et une série d'activités a été organisée en 2008 pour leur diffusion. Ils ont été traduits en espagnol et en français et devraient l'être en arabe, portugais et russe dans les prochains mois.

L'OIE a pris une part active, en collaboration avec ACT/EMP, à la coordination de la Conférence sur le travail des enfants à l'intention des entreprises d'Amérique latine et des Caraïbes, qui s'est tenue à Buenos Aires en octobre 2008, sous l'égide de l'IPEC et de l'Union industrielle d'Argentine (UIA). Un atelier a été organisé à cette occasion, au cours duquel les guides élaborés par l'OIE et ACT/EMP (version espagnole) ont fait l'objet d'une promotion. La réunion avait pour principal objectif de renforcer les capacités des organisations d'employeurs et des entreprises par le biais d'une formation à l'utilisation du guide pour les employeurs. La conférence a, en outre, encouragé l'échange au niveau sous-régional d'informations sur les bonnes pratiques des entreprises dans le cadre de la lutte contre le travail des enfants et a présenté des exemples d'entreprises qui promeuvent l'éradication du travail des enfants avec succès.

■ *Elimination de la discrimination en matière d'emploi et de profession*

L'OIE prend une part active, tant directement qu'indirectement, à la lutte contre les diverses formes de discrimination. Des exemples de l'engagement de l'organisation à cet égard sont donnés ci-après.

L'OIE continue de participer activement à la lutte contre le VIH/sida et à ses conséquences, qui risquent d'être lourdes pour le monde du travail. Il importe de s'attaquer à ce problème dans les régions qui sont actuellement sévèrement touchées, mais il faut aussi s'y attaquer dans les régions ou les zones où la pandémie n'a pas encore atteint des proportions spectaculaires mais où le risque existe bel et bien.

L'emploi des jeunes continue d'être une des questions essentielles sur laquelle travaille l'OIE. Cette dernière a collaboré avec le BIT à l'élaboration d'un guide pratique, qui est un répertoire d'actions menées dans ce domaine par les entreprises du monde entier. Ce guide pratique a été conçu comme un outil de référence commun, contribuant à créer des opportunités d'emploi pour les jeunes.

III. Domaines de préoccupation

Dans toutes nos activités, nous continuons clairement à soutenir la Déclaration, son suivi et les quatre principes fondamentaux. Toutefois, nous saisissons cette occasion pour mettre l'accent sur certaines préoccupations de l'OIE et du groupe des employeurs du Conseil d'administration du BIT concernant la Déclaration et son suivi.

1. Renforcement de la capacité de l'OIT d'appuyer les efforts déployés par ses Membres pour atteindre ses objectifs dans le contexte de la mondialisation

Pendant la session de 2008 de la Conférence internationale du Travail, la *Déclaration de l'OIT sur la justice sociale pour une mondialisation équitable* a été adoptée à l'unanimité. Son texte réaffirme les principes de la Déclaration de Philadelphie de 1944 et ceux contenus dans la Déclaration relative aux principes et droits fondamentaux au travail (1998). L'OIE et le groupe des employeurs du Conseil d'administration du BIT continueront à promouvoir la Déclaration de 1998 mentionnée dans le préambule de la nouvelle déclaration.

Au cours des consultations et des réunions du groupe directeur à venir, l'OIE et le groupe des employeurs insisteront sur la nécessité de continuer à promouvoir séparément la Déclaration de 1998 et son suivi.

2. *Analyse des bases nationales de référence*

Nous soutenons fermement l'approche fondée sur les bases de référence. Il s'agit là d'une manière innovante et créative d'utiliser les informations recueillies dans le cadre de l'examen annuel. Nous avons réitéré notre soutien au cours des débats du Conseil d'administration consacrés à cet examen.

Il faut éviter que cette analyse ne soit utilisée pour établir un classement entre les pays. Les bases de référence devraient rester un moyen de suivre les progrès réalisés par les Etats Membres – non pas par rapport à des normes imposées de l'extérieur, mais par rapport à leur propre situation. Conformément à l'esprit et aux objectifs de la Déclaration, chaque Etat Membre doit pouvoir donner effet aux quatre principes fondamentaux de manière adaptée au contexte national. Il reste à mesurer les effets que ces analyses peuvent produire.

3. *Obligations au titre de la Déclaration*

L'évaluation menée au titre de l'examen annuel devrait se concentrer sur les mesures prises par les Etats Membres pour donner effet aux principes fondamentaux. Elle ne devrait pas porter sur la loi et la pratique. Les employeurs ne cessent de répéter que la Déclaration et son suivi sont un instrument politique, et non juridique comme le sont les mécanismes ordinaires de contrôle de l'OIT. Les obligations politiques nécessaires pour promouvoir et réaliser pleinement les principes consacrés par la Déclaration doivent rester distinctes des obligations juridiques spécifiques découlant de la ratification d'une convention.

4. *Ratification des conventions fondamentales*

L'OIE et le groupe des employeurs ont fait part de leurs préoccupations quant à l'importance donnée à la ratification des conventions fondamentales dans le cadre du suivi de la Déclaration. Cette dernière est un instrument politique, et il faudrait plutôt insister sur les efforts déployés par les Etats Membres (ainsi que sur les résultats obtenus et les problèmes rencontrés) pour donner effet aux quatre principes fondamentaux.

La Déclaration est l'instrument qui doit permettre de mettre l'accent sur le respect des principes fondamentaux. Aussi, plutôt que de veiller à ce que les Etats Membres appliquent à la lettre chaque article d'une convention, elle s'intéresse aux efforts que les Etats Membres consentent pour donner effet aux principes.

5. *Renforcement des compétences des organisations d'employeurs et coopération technique*

La Déclaration ne peut être efficacement soutenue que par des mandants forts. Il faut donc s'attacher à utiliser le mécanisme de suivi de la Déclaration pour renforcer les capacités des organisations d'employeurs afin d'aider ces derniers à mieux faire entendre leur voix et à affermir l'esprit du tripartisme et du dialogue social.

Des ressources devraient être affectées spécialement au développement de programmes de coopération technique s'adressant spécifiquement aux organisations d'employeurs. Il faudrait aussi inciter les donateurs à consacrer une partie de leurs fonds au renforcement des compétences des partenaires sociaux.

6. *La Déclaration a 10 ans*

Chaque année depuis l'adoption de la Déclaration, en 1998, nous en apprenons davantage sur les éléments du mécanisme de suivi qui remplissent leur office et sur ceux qui appellent des améliorations.

Le 10^e anniversaire de la Déclaration de l'OIT, en 2008, a été l'occasion de réexaminer le mécanisme de suivi en vue de trouver les moyens de le renforcer. Grâce aux enseignements de ces dix dernières années, on pourrait affiner ce mécanisme afin qu'il conserve toute sa pertinence.

La Déclaration est le parfait exemple de ce que l'OIT doit faire, grâce à son système unique, pour parvenir à un consensus sur les grands enjeux sociaux. Nous nous réjouissons de l'occasion qui nous est donnée de rendre compte des résultats obtenus, et nous restons ouverts à toute question concernant le présent document.



Observaciones generales de la Organización Internacional de Empleadores (OIE) en el marco del examen anual de 2009 ¹

Como ya hiciera en el examen anual de 2008, la Organización Internacional de Empleadores (OIE) envió una declaración en la que describe su posición y actividades en relación con la Declaración y su seguimiento, que se reproduce a continuación en su integridad.

En los diez últimos años, la OIE ha respaldado la Declaración de la OIT sobre los principios y derechos fundamentales en el trabajo, de 1998, y su seguimiento. Cuando se adoptaba la Declaración, los empleadores manifestaron que dicho instrumento representaba un aliciente y una oportunidad para consagrar a la OIT como la principal organización multilateral en cuestiones sociales.

[En 2008] se conmemora el 10.º aniversario de la adopción de la Declaración y la OIE quisiera aprovechar la oportunidad para reiterar el compromiso contraído respecto de los principios consagrados en la Declaración, cuya importancia continúa creciendo como ha sido el caso en los diez últimos años.

La OIE sigue apoyando la Declaración y su seguimiento. A este respecto, el proceso que le interesa es el del seguimiento anual relativo a los convenios fundamentales no ratificados («el examen anual»).

La presente comunicación tiene por objeto dar una idea general de los esfuerzos que la OIE realizó en 2007 y 2008 para promover la Declaración y sus cuatro Principios.

En aras de su mejor comprensión, la OIE ha agrupado sus observaciones en tres partes:

- I. Esfuerzos de la OIE para apoyar la Declaración;
- II. Iniciativas de la OIE en relación con los cuatro principios fundamentales;
- III. Areas de interés.

I. Esfuerzos de la OIE para apoyar la Declaración

Diez años después de su adopción, la Declaración, elaborada por iniciativa del Grupo de los Empleadores en la OIT, sigue siendo una herramienta importante para dicho colectivo, y la OIE sigue comprometiéndose firmemente a garantizar su buen éxito.

La OIT ha participado en la promoción y el apoyo de la Declaración a lo largo de los diez últimos años. A continuación se facilitan algunos ejemplos sobre la manera en que su compromiso se ha traducido en medidas concretas en 2007 y 2008.

¹ En el marco del examen anual de la Declaración de la OIT, la información de referencia por países se basa en los siguientes elementos, en la medida en que están disponibles: información proporcionada por el gobierno en el marco del examen anual de la Declaración, observaciones formuladas por las organizaciones de empleadores y de trabajadores, estudios de caso preparados bajo los auspicios del país y de la OIT, y observaciones/recomendaciones formuladas por los Expertos Consejeros en la Declaración y el Consejo de Administración de la OIT.

1. Documento de posición de la OIE: Declaración de la OIT sobre los principios y derechos fundamentales en el trabajo

La OIE sigue procurando realzar la notoriedad y la utilidad a la Declaración. El documento de posición que la OIE adoptó en 2006 acerca de la Declaración es el marco de referencia de la labor que dicha organización realiza en este sentido. La OIE insta a sus federaciones miembros a que ajusten las actividades de ámbito nacional a los principios de la Declaración y a que subrayen su importancia en cada oportunidad que surja.

2. Nuevos productos de la OIE

[En 2008], la OIE publicó la segunda edición de su *International Labour and Social Policy Review (Revista de política laboral y social internacional)*. En dicha revista, difundida en junio, se recogen artículos sobre distintos aspectos de la Declaración: el empleo de los jóvenes, las tendencias registradas en la negociación colectiva y el VIH/SIDA en el lugar de trabajo.

[En 2008] también se publicó un nuevo producto de la OIE: la Encuesta de 2008 sobre las «Tendencias en el lugar de trabajo», destinada a las federaciones miembros de la OIE. Más de las dos terceras partes de los miembros de dicha organización respondieron a la encuesta, la cual permitió obtener numerosos elementos de información relativos a la Declaración y a sus cuatro principios: los migrantes, las consideraciones de género y las tendencias en materia de negociación colectiva.

La OIE prevé que esta encuesta se convierta en una encuesta anual sobre las tendencias registradas en el lugar de trabajo. Desde marzo de 2008 trabaja en la nueva encuesta de 2009 y trata de ampliar los temas de interés que descollaron de la encuesta de 2008. Muchos de ellos, como las mujeres, los migrantes y los trabajadores de edad en el mercado laboral, se refieren a los principios de la Declaración.

3. El Informe global y las discusiones en la CIT

La OIE sigue considerando que el Informe global y su discusión en la Conferencia Internacional del Trabajo (CIT) son herramientas eficaces para la promoción de la Declaración. Estas discusiones representan una oportunidad excelente para que las organizaciones de empleadores se impliquen activamente en la Declaración, dado que los temas que se abordan en el Informe afectan directamente a esas organizaciones.

Para colaborar en la preparación de la reunión de la CIT de 2008, la OIE organizó una reunión con representantes gubernamentales para intercambiar y exponer las opiniones del Grupo de los Empleadores sobre los distintos puntos del orden del día de la reunión de la CIT de 2008. Además, se realizó una presentación del Informe global que se publicaría y que se titulaba *La libertad de asociación y la libertad sindical en la práctica: lecciones extraídas*, con miras a tratar los temas de interés y los motivos de preocupación para el Grupo. Se subrayó una vez más la importancia que revestía la Declaración para el Grupo de los Empleadores.

La OIE, asumiendo sus funciones de secretaría del Grupo de los Empleadores en la CIT, coordinó la participación de más de diez delegados empleadores en el debate [de 2008]. Colaboró estrechamente con el portavoz de los empleadores y con los oradores con objeto de exponer las opiniones, posiciones e inquietudes de los empleadores.

Entre las labores preparatorias para este debate hubo consultas con las federaciones miembros, con ACT/EMP, con el portavoz de los empleadores, con el Departamento de la Declaración y con el Grupo de los Trabajadores. Asimismo, se prepararon para el Grupo de los Empleadores notas en que se recogían los puntos del Informe global que presentaban mayor interés, así como posibles temas de discusión para enriquecer el debate.

En el marco de los preparativos del debate sobre el Informe global y la promoción de la Declaración, la OIE coordinó una reunión sobre el futuro de la Declaración, cuya celebración estaba programada para el 3 de junio, fecha de la reunión del Grupo de los Empleadores. Habida cuenta de que en [2008] se celebró el 10.º aniversario de la Declaración, la OIE consideró que esa reunión brindaría una ocasión ideal para abordar los objetivos de la Declaración, las enseñanzas extraídas en los diez últimos años y, sobre todo, el futuro de la Declaración. El Sr. Kari Tapiola, Director Ejecutivo de la OIT, y usted mismo, aceptaron amablemente nuestra invitación a dirigirse al Grupo.

4. Responsabilidad social de la empresa (RSE)

La notoriedad y la importancia de la RSE siguen en auge, al igual que la transcendencia de la Declaración como valioso punto de referencia para los debates.

La OIE, por conducto de su Grupo de Trabajo sobre la RSE, sigue facilitando pautas de orientación a sus federaciones miembros respecto de la manera de aplicar y apoyar la Declaración en este contexto. El Grupo de Trabajo se reúne tres veces al año. En 2007 se reunió en marzo, junio y noviembre para abordar diversos temas y nuevas iniciativas en materia de RSE.

La OIE coordina la participación de sus miembros en el Grupo de Trabajo sobre la responsabilidad social de la Organización Internacional de Normalización (ISO). [En 2008] se celebró la sexta reunión del Grupo de Trabajo en Santiago (Chile), en la que estuvo representada la OIE. La información sobre esta reunión se envió a todas las federaciones miembros.

En el marco de los servicios de secretaría que presta a la Subcomisión de Empresas Multinacionales (MNE) de la OIT, la OIE ha participado activamente en los cursos de RSE organizados por el Centro Internacional de Formación de la OIT en Turín.

La OIE, en colaboración con dos despachos de abogados de renombre mundial especializados en derecho laboral, Ius Laboris y Baker & McKenzie, celebrará una Conferencia mundial sobre la globalización y el futuro del Derecho del Trabajo. El acto, que organizará la Confederación Francesa de Empresarios (MEDEF) y se celebrará en París del 24 al 25 de noviembre de 2008, incluirá diversas reuniones relacionadas con la RSE, como la Reunión 4, titulada *Los efectos de la responsabilidad social de las empresas en la legislación del trabajo*, y la Reunión 5, titulada *El papel de los códigos de conducta y los acuerdos marco internacionales*.

A principios de 2008, la OIE llevó a cabo un análisis de los acuerdos marco internacionales (AMI). El surgimiento de acuerdos de este tipo en los veinte últimos años brinda la oportunidad de analizar su contenido y de identificar algunas de sus tendencias comunes e incipientes. En el documento se presentan algunos puntos generales sobre las empresas signatarias y las federaciones sindicales internacionales cuando se alcanza un acuerdo. Acto seguido se definen las tendencias comunes sobre las disposiciones sustantivas y de procedimiento de los AMI, disposiciones a las que el público puede acceder.

Una conclusión interesante fue que el AMI tipo se crea en torno a los principios fundamentales en el trabajo, a su vez extraídos de los ocho convenios fundamentales (Convenios núms. 87 y 98, 29 y 105, 138 y 182, 100 y 111)². En los 51 AMI examinados se hace referencia al respeto de los cuatro principios fundamentales.

² Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87); Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98); Convenio sobre el trabajo forzoso, 1930 (núm. 29); Convenio sobre la abolición del trabajo forzoso, 1957 (núm. 105); Convenio sobre la edad mínima, 1973

Este análisis se presentó a la Global Industrial Network de la OIE, integrada por 25 empresas multinacionales, durante su reunión en 2008 y durante la reunión del Grupo de Trabajo sobre la RSE de la OIE celebrada en junio.

5. *El Pacto Mundial*

Los principios laborales del Pacto Mundial dimanar de la Declaración de la OIT. La OIE sigue participando activamente en la promoción del Pacto Mundial. Además, el Secretario General de la OIE es miembro de su Consejo.

En junio de 2008, la OIE organizó la primera reunión del Grupo de Trabajo sobre Asuntos Laborales del Pacto Mundial, a raíz de la cual se elaborará una guía de referencia sobre los principios laborales; la OIE participa activamente en esta iniciativa.

II. **Iniciativas de la OIE en relación con los cuatro principios fundamentales**

Además de contribuir a la promoción de la Declaración, la OIE realiza grandes esfuerzos para impulsar y apoyar cada uno de los cuatro principios fundamentales. A continuación se mencionan algunos de estos esfuerzos realizados a lo largo de todo el año.

■ *Libertad sindical y libertad de asociación, y reconocimiento efectivo del derecho de negociación colectiva*

El principal mecanismo de participación de la OIE en lo que se refiere a la libertad sindical y la libertad de asociación sigue siendo el del Comité de Libertad Sindical (CLS) del Consejo de Administración. La OIE sigue colaborando estrechamente con los miembros empleadores del CLS para que la labor de éste siga siendo significativa para los empleadores.

[Se hace referencia a un caso pendiente ante el Comité de Libertad Sindical de la OIT.]

Asimismo, la OIE sigue ayudando a las organizaciones de empleadores que no disfrutan plenamente de la libertad de asociación y la libertad sindical. Presta asistencia, orientación y apoyo a fin de garantizar el respeto de este principio fundamental.

Si bien la libertad de los empleadores prevalece en muchos países del mundo y se da en gran medida por sentada, los cambios registrados en otras partes del mundo siguen amenazando esos derechos, por lo que se requiere la atención del Grupo de los Empleadores y de la OIE.

■ *Eliminación de todas las formas de trabajo forzoso u obligatorio*

La OIE colabora activamente con el Programa Especial de Acción para Combatir el Trabajo Forzoso (SAP-FL) de OIT/DECLARATION en la preparación de la publicación titulada *Lucha contra el trabajo forzoso: Manual para empleadores y empresas*.

(núm. 138); Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182); Convenio sobre igualdad de remuneración, 1951 (núm. 100) y Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111).

A principios de año, la OIE se dirigió a una importante reunión de las Naciones Unidas sobre el trabajo forzoso y la trata de personas, que se celebró en Viena, y expuso los desafíos que esta cuestión planteaba a los empleadores.

En febrero de 2008, la OIE, la OIT, el Consejo de Estados Unidos para el Comercio Internacional y la Cámara de Comercio de los Estados Unidos celebraron una reunión de un día para realzar el principio de la eliminación del trabajo forzoso ante las empresas multinacionales estadounidenses. El evento fue organizado por Coca-Cola en Atlanta y congregó a más de 80 participantes procedentes del sector privado, organizaciones internacionales y ONG. Durante esta discusión, se formuló una serie de preguntas sobre la definición del trabajo forzoso y sobre lo que cabe o no incluir en dicha definición. Para ayudar a los participantes a responder a dichas preguntas, la OIE está preparando un material que abarca elementos fundamentales extraídos de los instrumentos de la OIT. Estos elementos fundamentales, que se refieren a seis preguntas clave, se señalan a la atención de las empresas para que orienten sus respuestas a la hora de afrontar el trabajo forzoso.

En mayo de 2008, el Secretario General Adjunto de la OIE participó como destacado orador en el evento organizado por Anti-Slavery International en torno al tema *¿Existen la esclavitud y el trabajo forzoso en la cadena de suministro?* En la presentación se recalcó lo difícil que resulta determinar y erradicar el trabajo forzoso desde la perspectiva de los empleadores.

Durante la reunión de la CIT, la OIE, asumiendo su función de secretaría del Grupo de los Empleadores, coordinó una reunión sobre Trabajo forzoso, derechos humanos y empresas. [] Se invitó al Jefe de [OIT/SAP-FL/DECLARATION] a dirigirse al Grupo de los Empleadores. Considera que ésta es una oportunidad especial para tratar la cuestión del trabajo forzoso y el papel que a este respecto desempeñan las organizaciones de empleadores.

La OIE también colaboró activamente con [OIT/SAP-FL/DECLARATION] en la coordinación y organización del Taller regional sobre el trabajo forzoso: el papel de las organizaciones de empleadores y de las empresas, celebrado en Bangkok, en junio de 2008. También coordinó la participación de las organizaciones de empleadores en la región. El objetivo del taller fue facilitar un espacio en que los representantes de los empleadores pudieran elaborar estrategias y planes de acción con miras a combatir el trabajo forzoso y a intercambiar información y experiencias. También se permitió a la OIE y a la OIT presentar los instrumentos que estaban elaborando.

En el marco de su labor en este ámbito, la OIE está preparando una guía, que es un primer intento de contestar a algunas de las preguntas que plantea la cuestión. En la guía se señalan a la atención de los empleadores y sus miembros los riesgos que representa el trabajo forzoso en sus operaciones, al paso que se proporciona orientación sobre cómo reconocer y prevenir las situaciones de trabajo forzoso, y sobre lo que los empleadores pueden hacer para abordar el problema. La guía se ha elaborado en el contexto de una estrategia mundial para lograr que los empleadores y sus organizaciones participen en esta empresa, y se espera que este instrumento sea útil para las organizaciones de empleadores y sus miembros.

■ *Abolición efectiva del trabajo infantil*

La OIE apoya la participación del Grupo de los Empleadores y de los portavoces de los empleadores del Comité Directivo del IPEC.

Reconociendo que no existían pautas prácticas redactadas con carácter específico para ayudar a los empleadores a abordar la cuestión del trabajo infantil en sus lugares de trabajo o sus cadenas de suministro, la OIE y ACT/EMP elaboraron un conjunto de guías para los empleadores. Las guías para los empleadores sobre la eliminación del trabajo infantil se publicaron en junio de 2007. En 2008 se organizaron diversas actividades para publicar esas guías, que se han traducido al español y al francés, y que deberían traducirse en los próximos meses al árabe, al portugués y al ruso.

La OIE ha colaborado activamente con ACT/EMP en la coordinación de la Conferencia empresarial contra el trabajo infantil para América Latina y el Caribe. Esta conferencia, organizada conjuntamente con el IPEC y la Unión Industrial Argentina (UIA), se celebró en Buenos Aires en octubre de 2008. La reunión incluyó un taller en el que se presentó la guía OIE-ACT/EMP en español. El principal objetivo de la reunión fue reforzar la capacidad de las organizaciones de empleadores y de las empresas mediante actividades de formación para el uso de la guía de los empleadores. La conferencia también promovió a escala subregional un intercambio de información sobre buenas prácticas empresariales para luchar contra el trabajo infantil, y presentó casos de empresas que logran fomentar la erradicación del trabajo infantil.

■ *Eliminación de la discriminación en materia de empleo y ocupación*

La OIE interviene activamente, de manera tanto directa como indirecta, en la lucha contra las distintas formas de discriminación. A continuación, se facilitan algunos ejemplos representativos de su participación en este ámbito.

La OIE sigue interviniendo activamente para paliar la problemática del VIH/SIDA, que por su gravedad podría acarrear funestas consecuencias para el mundo del trabajo. Si bien es importante atacar este problema en las regiones hoy gravemente afectadas por el fenómeno, también es importante hacerlo en aquellas regiones/zonas donde la epidemia no ha alcanzado todavía proporciones desastrosas, aunque ello podría suceder.

El empleo de los jóvenes sigue siendo un elemento fundamental de la labor de la OIE. Esta ha cooperado con la OIT en la elaboración de una guía práctica, que es en realidad una recopilación de iniciativas utilizada por la comunidad empresarial a escala mundial. Con esta guía se pretende dar a conocer los recursos utilizados para ayudar a generar oportunidades de empleo para los jóvenes.

III. Areas de interés

El apoyo que la OIE brinda a la Declaración, a su seguimiento y a los cuatro principios fundamentales trasluce indudablemente en sus actividades. Sin embargo, aprovecha esta oportunidad para hacer hincapié en las inquietudes concretas que tanto ella como el Grupo de los Empleadores de la OIT albergan en relación con la Declaración y su seguimiento.

1. *Fortalecimiento de la capacidad de la OIT para prestar asistencia a los Miembros en la consecución de sus objetivos en el contexto de la globalización*

Durante la reunión de la CIT celebrada en 2008, la Declaración de la OIT sobre la justicia social para una globalización equitativa fue adoptada por unanimidad. En su texto se reafirman los principios de la Declaración de Filadelfia de 1944, así como aquéllos contenidos en la Declaración de 1998 relativa a los principios y derechos fundamentales en el trabajo. La OIE y el Grupo de los Empleadores de la OIT seguirán defendiendo la promoción de la Declaración de 1998 mencionada en el preámbulo de la nueva Declaración.

Durante las próximas consultas y reuniones del Grupo Directivo, la OIE y el Grupo de los Empleadores subrayarán la necesidad de confirmar que se seguirá promoviendo por separado la Declaración de 1998 relativa a los principios y derechos fundamentales en el trabajo y su seguimiento.

2. *Análisis de las referencias nacionales*

La OIE apoya sin reservas el enfoque de los estudios de referencia, que representa un mecanismo creativo e innovador para aprovechar la información recabada a través del examen anual. Reiteró este apoyo en el curso de los debates del Consejo de Administración en el marco del examen anual.

Es importante evitar que este análisis se utilice para clasificar a los países. Deberían proseguirse los estudios de referencia como herramienta valiosa para seguir la progresión de los Estados Miembros a lo largo del tiempo, partiendo de los avances logrados por los propios Estados y no con referencia a criterios exteriores. De acuerdo con la filosofía y el objeto de la Declaración, se debe permitir a cada Estado Miembro poner en práctica los cuatro principios fundamentales de una manera que resulte adecuada a sus circunstancias nacionales. Queda por ver cuáles serán las repercusiones de estos análisis.

3. *Obligaciones contraídas en virtud de la Declaración*

Las evaluaciones llevadas a cabo mediante el examen anual deberían centrarse en las medidas adoptadas por los Estados Miembros para poner en práctica los principios fundamentales. Estas evaluaciones no deberían suponer una discusión de la legislación y la práctica. Los empleadores han reiterado en varias ocasiones que la Declaración y su seguimiento constituyen una vía política, y no un cauce jurídico, como el mecanismo de control periódico de la OIT. Las obligaciones políticas que deben contraerse para promover, alcanzar y poner en práctica los principios de la Declaración deben seguir diferenciándose de las obligaciones jurídicas concretamente derivadas de la ratificación de los convenios.

4. *Ratificación de los convenios fundamentales*

La OIE y el Grupo de los Empleadores han expresado preocupación respecto del énfasis que, en toda la parte de la Declaración relativa al seguimiento, se pone en la ratificación de los convenios fundamentales. La Declaración es un instrumento político y, por lo tanto, sería más acertado hacer hincapié en los esfuerzos de los Estados Miembros (así como en sus logros y retos) destinados a dar cumplimiento a los cuatro principios fundamentales.

Se supone que la Declaración debería polarizar la atención en el respeto de los principios fundamentales. Esto significa que, en lugar de examinar si los Estados Miembros han cumplido el tenor de todos y cada uno de los artículos de un convenio, se debería analizar el empeño que estos Estados ponen en dar cumplimiento a los principios.

5. *Capacitación de las organizaciones de empleadores y cooperación técnica*

Para que la Declaración pueda promoverse de manera efectiva es preciso que los mandantes sean fuertes. Se debe cuidar por tanto de que el seguimiento de la Declaración sirva para fortalecer la capacidad que las organizaciones de empleadores tienen para contribuir a mejorar la representación de las empresas y fortalecer la filosofía del tripartismo y el diálogo social.

Deberían consignarse recursos para financiar la formulación de programas de cooperación técnica expresamente destinados a las organizaciones de empleadores. También se debería animar a los donantes a dedicar parte de sus recursos financieros a la capacitación de los interlocutores sociales.

6. *Décimo aniversario de la Declaración de la OIT*

Cada año que pasa desde que se adoptó la Declaración de la OIT de 1998, aprendemos más acerca de los aspectos de su seguimiento que resultan útiles y eficaces para lograr sus objetivos, y de los aspectos que son mejorables.

El 10.º aniversario de la Declaración de la OIT, que se celebrará en 2008, brinda una oportunidad apropiada para examinar las labores de seguimiento con miras a encontrar la manera de reforzarlas. Aprovechar las enseñanzas extraídas a lo largo de los diez últimos años tal vez ayude a perfeccionar las actividades de seguimiento a fin de velar por que sigan siendo pertinentes.

La Declaración sigue siendo un ejemplo destacado de la manera en que la OIT puede y debe reaccionar ante cuestiones sociales urgentes, a través del proceso de creación de consenso que la caracteriza. La OIE agradece esta oportunidad de facilitar información, y responderá gustosa a cualquier pregunta que surja de la lectura del presente documento.